



MANAGING ACCESS

Guidance for Owners and Managers of Land



SRPBA

SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

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SECTION 01: INTRODUCTION

This guidance is intended to provide land managers with the information that will assist their review and assessment of the type and level of access taken, the implications of access for other land management activities and to employ a range of access management techniques that will help to integrate access with other land uses.

This guidance reflects information available at the time of its publication. Accordingly, account must always be taken of any relevant changes in law, policy or other circumstances since that time.

It is for general information only, and must never be relied upon as any substitute for appropriate professional advice, which should always be taken in any situation in which financial or other interests may be at stake. No liability can be accepted by SRPBA or its employees for any misstatement in it or omission from it.

Section 1 presents the context within which land managers will operate in the fulfilment of obligations under the terms of the access legislation. **Section 2** provides an opportunity to consider the practical implications of access management, while the fact sheets in **section 3** offer more detailed and comprehensive information on a range of pertinent access related issues.

1.1 Access Management in Context

Part 1 of the Land Reform (Scotland) Act 2003 (to be referred to as the Act in this document) provides a right of non-motorised access to most land and inland water in Scotland. The right of access may be exercised for recreational purposes, educational purposes, or for the purpose of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit. **Fact sheet 1**, in section 3, summarises those parts of the Act that are most relevant for land managers.

Access rights are conditional upon **responsible** behaviour. The Scottish Outdoor Access Code (to be referred to as the Code in this document) provides detailed guidance on how to exercise access rights responsibly, and on how to manage land and water responsibly for access. Three key principles underpin the Code, these are:

- Respect the interests of other people.
- Care for the environment.
- Take responsibility for your own actions.

Box 1 provides a summary of advice to users on how to exercise access rights responsibly, as determined by the Code.

Part 4 of the Code provides guidance on how land managers should manage land and water responsibly for access. A summary of these responsibilities is outlined in **Box 2**.

In addition to the main comprehensive Code, Scottish Natural Heritage (SNH) will be producing a number of shorter introductions to the Code that will outline the responsibilities of particular groups of users and providers. Among these will be an introduction to the Code for land managers. This will be issued to SRPBA members, as an addendum to this guidance, once it becomes available. It is expected that the Act and the Code will come into force in early 2005. While the Code does not carry any legal authority, it will nevertheless have evidential status where disputes are brought before the Sheriff for determination. The Code will therefore be a reference point for deciding whether a person (user or land manager) has acted responsibly. It will also be used as a point of reference by Local Access Forums (see **fact sheet 2**), when involved in decision making and dispute resolution.

The fulfilment of land managers' responsibilities, as laid out in the Code, will mean that land managers will have to consider how access can be integrated with other land uses and land management operations. What this means in practice will vary depending on individual circumstances. The degree of active access management and the particular methods and techniques used will not be the same for every locality and every situation. When making decisions about access management, considerations may include:

■ **The level and type of access taken.**

Managers of areas that encounter a high level of access may find it useful to approach access management proactively, directing users to routes and areas that can more readily be integrated with other land management operations. In areas where access levels are low, such active access management may not necessarily be required to the same degree.

If the type of access taken is, for example, predominately by horse riders, then access management should be tailored to this type of user.

■ **Proximity of the land in question to centres of population.**

Farms and estates located on the urban fringe may find that access management is an important element of overall farm/estate management. This may be less so in more rural locations where levels of access may be comparatively lower, and where there is less impact on land management activities from recreational use.

■ **The nature of other land uses and land management activities.**

Some land uses and land management operations can have implications for public safety. The degree of risk will relate to the seasons and time of day when these land uses and land management operations are carried out, levels and types of access and types of users (for example, children will generally be less aware of danger and of how to keep safe). Timber extraction, for example, is potentially a high risk activity, and land managers may wish to employ techniques such as risk assessment when integrating access with forestry operations. **Fact sheets 3 and 4** give more information on risk assessment and liability respectively.

■ **The desire to maintain a "management balance" in the countryside.**

The countryside is a working environment as well as a locus for recreational and leisure pursuits. While it may be necessary at times to actively manage access, it is neither desirable nor practicable to cover the countryside with signs, notices and markers. The land manager therefore has the difficult task of finding a balance between managing access so that it can be integrated with other land management activities, and maintaining the sense of freedom that differentiates the countryside from urban or semi-urban settings. The third of the key principles in the Code – "Taking responsibility for your own actions" should help the land manager to achieve this delicate balance. This principle asserts that the countryside is not risk-free, and that people exercising access rights must have regard for their own safety and the safety of others. So, while the land manager must have regard for people's safety, users cannot expect all risks to be explained, mediated or removed.

1.2 Working with the Local Authority

The Code encourages land managers to work with local authorities to integrate access. Land managers can contribute knowledge of the land and concomitant land uses to discussions on access planning that few others will be able to offer. In so doing, land management interests will be considered at the earliest stage of local authority access development initiatives.

Engagement with the Local Access Forum (LAF) will also assist the better understanding of land management concerns and interests among recreation groups, public bodies and other agencies with an interest in local access issues. The LAF can also be used to help resolve disputes or problems being experienced by the land manager. The LAF can therefore provide a useful and practical support mechanism for land managers. Further information on LAFs is given in **fact sheet 2**.

SECTION 01: INTRODUCTION

(CONTINUED)

Local authority Access Officers should be contacted in the first instance with regard to the LAF, and they will also be able to provide information and assistance with a range of access issues. **Fact sheet 5** provides contact details for local authority Access Officers. These details, together with a comprehensive range of access related information, can also be found on the following websites:

- Scottish Natural Heritage: www.outdooraccess-scotland.com
- The Paths For All Partnership: www.pathsforall.org.uk

The Act imposes a duty on local authorities to uphold access rights and to provide reasonable public access throughout their area. In upholding access rights local authorities will have the power to enter land, give written notice to landowners of action to be taken to remedy any infringement of the right of access, and take measures to ensure the safety and protection of the public.

1.2.1 Core Paths

The duty of local authorities to give reasonable access throughout their area will involve drawing up a plan for a system of "core paths" within 3 years of the access legislation coming into force. Core paths are paths, routes, waterways or any other means of crossing land to facilitate the exercise of access rights. A system of core paths may include Rights of Way, paths, cycle tracks, and paths which may or may not be delineated by a path agreement or a path order. Core path surfaces may range from grass to tarmac.

There is provision within the access legislation for local authorities to maintain paths or to provide for the maintenance of paths, i.e.:

- Section 19(a) – discretionary power to maintain a core path, and
- Section 21(1) – power to enter into a path agreement for the delineation and maintenance or, ...for the delineation, creation and maintenance of a path...

The above provisions do not impose a duty on local authorities, these powers may not, therefore, apply to every core path.

1.2.2 Path Agreements

Path agreements will only apply to land already within access rights (that is all land except that excluded in section 6 of the Act – see **fact sheet 1** for further detail), so path agreements will not be used to secure basic access. Local authorities may use path agreements to:

- Agree a particular line for the core path with the land manager.
- Agree management and maintenance issues – for example, upgrading works to bring a path up to a suitable standard.
- Agree the creation of a new path as a core path, involving development and construction works, signposting etc.

The terms and conditions as to payments (in respect of agreed maintenance schedules and/or reimbursement for quantifiable losses, etc), or otherwise, will be specified within the path agreement. Payments will not be in respect of charging for access. Not all core paths will be subject to path agreements, and local authorities may also acquire an interest in a path by lease or acquisition. If a path agreement were to be considered between a landowner and the local authority, it would be advisable to seek specific advice on the legal aspects of such agreements. A model path agreement is illustrated in **fact sheet 6**.

1.2.3 Path Orders

Where specific access arrangements cannot be secured by path agreement, the local authority will have the power to delineate a path by order. However, before doing so, the local authority must consider the rights and interests of the owner of the land in question.

The local authority has a duty to maintain paths that have been delineated by a path order (s22(3)(a)). Paths delineated by a path order may be regarded as being within the control of the local authority, which would then be subject to the terms of the Occupiers' Liability (Scotland) Act 1960 (s22(4)).

If a path order were to be served by the local authority, it would be advisable to seek specific legal advice.

1.3 Liability

The terms of the Occupiers Liability (Scotland) Act 1960, remain unaffected by the access legislation. This means that the landowner or land manager will continue to have a duty of care towards the public. Moreover, duty of care requirements and the degree to which the landowner is held liable for injury or loss may increase where a path or route is actively promoted.

Liability has not been addressed effectively by the Code or the draft Guidance to local authorities. In the absence of case law therefore, it is still uncertain how the courts will deal with liability issues once the access legislation and the Code come into force. **Fact sheet 4** provides further information on liability and the Occupiers Liability (Scotland) Act 1960.

1.4 The Disability Discrimination Act

The Disability Discrimination Act 1995 (DDA) introduced laws to prevent discrimination against disabled people. Implemented in stages, the third and final part came into force on 1st October 2004. The DDA gives disabled people new rights in the areas of employment, buying or renting land or property, and access to goods, **facilities and services**. Land managers involved in developing and providing access **may** constitute as "service providers" under the terms of the DDA. Service providers will have a duty to make **reasonable adjustments** to ensure that disabled people are able to make use of the service offered.

It will not be practicable, desirable or reasonable to make all paths fully accessible. However, there may be some situations where it would be unreasonable not to offer access to services to disabled people. More information on the DDA, and what it means for land managers, is provided in **fact sheet 7**.

1.5 Commercial Access

The access legislation will provide the right to be on land for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit (s1(3)(c)). Examples of commercial access are provided in the Code and include a mountain guide who is taking a customer out walking, a canoe instructor from a commercial outdoor pursuits centre with a party of canoeists and a commercial writer or photographer writing about or taking photographs of the natural or cultural heritage.

Guidance within the Code for commercial operators does not go beyond encouragement for those running a business that utilises access rights to:

- Plan activities in ways that minimise possible impacts on land management and the interests of others if a particular place is used regularly or if the visit might cause particular safety or environmental concerns.
- Talk to land managers who are responsible for places used regularly or intensively.
- Obtain the permission of the relevant land manager(s) before using a facility or service provided for another business by the land manager (such as an equestrian facility).
- Consider assisting with care of the resource used by the commercial business.

With such limited guidance, lack of explanation in the Code of the kinds of commercial activities to which the right of access would not apply and the absence of case law, it is uncertain how commercial access will affect the rights of landowners (if at all). Case law may indeed clarify the issue in time.

SECTION 01: INTRODUCTION

(CONTINUED)

It is hoped that the information in this guidance document will assist land managers to manage access proactively and successfully. If you require further information and/or support on any general or specific access issue please contact the SRPBA Access Officer at:

**SRPBA, Stuart House
Eskmills Business Park
Musselburgh
EH21 7PB**

Tel: 0131 653 5400

Fax: 0131 653 5401

E-mail: accessofficer@srpba.com

BOX 01: THE SCOTTISH OUTDOOR ACCESS CODE

PART 3 – EXERCISING ACCESS RIGHTS RESPONSIBLY

Summary of Responsibilities

1. **Take personal responsibility for your own actions.** You can do this by:
 - Caring for your own safety by recognising that the outdoors is a working environment and by taking account of natural hazards.
 - Taking special care if you are responsible for children as a parent, teacher or guide to ensure that they enjoy the outdoors responsibly and safely.
2. **Respect people's privacy and peace of mind.** You can do this by:
 - Using a path or track, if there is one, when you are close to a house or garden.
 - If there is no path or track, by keeping a sensible distance from houses and avoiding ground that overlooks them from close by.
 - Taking care not to act in ways which might annoy or alarm people living in a house.
 - At night, taking extra care by keeping away from buildings where people might not be expecting to see anyone and by following paths and tracks.
3. **Help land managers and others to work safely and effectively.** You can do this by:
 - Not hindering a land management operation, by keeping a safe distance and following any reasonable advice from the land manager.
 - Following any precautions taken or reasonable recommendations made by the land manager, such as to avoid an area or route when hazardous operations, such as tree felling and crop spraying, are underway.
 - Checking to see what alternatives there are, such as neighbouring land, before entering a field of animals.
 - Never feeding farm animals.
 - Avoiding causing damage to crops by using paths or tracks, by going round the margins of the field, by going on any unsown ground or by considering alternative routes on neighbouring ground; and by
 - Leaving all gates as you find them.
4. **Care for your environment.** You can do this by:
 - Not intentionally or recklessly disturbing or destroying plants, birds and other animals, or geological features.
 - Following any voluntary agreements between land managers and recreation bodies.
 - Not damaging or disturbing cultural heritage sites.
 - Not causing any pollution and by taking all your litter away with you.
5. **Keep your dog under proper control.** You can do this by:
 - Never letting it worry or attack livestock.
 - Never taking it into a field where there are calves or lambs.
 - Keeping it on a short lead or under close control in fields where there are farm animals.
 - If cattle react aggressively and move towards you, by keeping calm, letting the dog go and taking the shortest, safest route out of the field.
 - Keeping it on a short lead or under close control during the bird breeding season (usually April to July) in areas such as moorland, forests, grassland, loch shores and the seashore.
 - Picking up and removing any faeces if your dog defecates in a public open place.
6. **Take extra care if you are organising an event or running a business.** You can do this by:
 - Contacting the relevant land managers if you are organising an educational visit to a farm or estate.
 - Obtaining the permission of the relevant land managers if your event needs facilities or services, or is likely, to an unreasonable extent, to hinder land management operations, interfere with other people enjoying the outdoors or affect the environment.
 - Talking to the land managers who are responsible for places that you use regularly or intensively.

SECTION 01: INTRODUCTION

(CONTINUED)

BOX 02: THE SCOTTISH OUTDOOR ACCESS CODE

PART 4 – MANAGING LAND & WATER RESPONSIBLY FOR ACCESS

Summary of Responsibilities

1. **Respect access rights in managing your land or water.** You can do this by:
 - Not purposefully or unreasonably preventing, hindering or deterring people from exercising access rights on or off paths and tracks. For example, by putting up any sign or notice; putting up any fence or wall; positioning or leaving at large any animal; carrying out any agricultural or other operation on the land; or taking, or failing to take, any other action for the purpose or main purpose of preventing or deterring access rights.
 - Using paths and tracks as a way of managing access across your land so that access is integrated with land management.
 - Taking access rights into account when planning and implementing any major land use change or development.
2. **Act reasonably when asking people to avoid land management operations.** You can do this by:
 - Asking people, if you have an opportunity to do so whilst undertaking a land management operation, to follow a particular route.
 - Taking precautions, such as asking people to avoid using a particular route or area or to avoid doing a particular activity where there are more serious or less obvious hazards to their safety, such as from tree felling or crop spraying.
 - Keeping any precautions to the minimum area and duration required to safeguard people's safety.
 - Telling the public, especially if levels of public access are high or if the operation is particularly dangerous, about any precautions at any obvious access points (such as car parks and gates).
3. **Work with your local authority and other bodies to help integrate access and land management.**
You can do this by:
 - Remembering that people respond best to land managers who show that people are welcome.
 - Working closely, where appropriate, with your local authority and its access officers and ranger service, local access forum and other bodies to help provide good paths across your land and to manage access positively.
 - Thinking about how you would like to see access provided for and managed on your land or water and involving your local authority in this.
4. **Take account of access rights if you manage contiguous land or water.** You can do this by:
 - Respecting any rights of way or customary access across your land or water.
 - Avoiding the use of "no access" signs or the locking or removal of gates or other access points, particularly on paths or tracks likely to be used by the public or without providing an alternative means of access.
 - Working with your local authority and other bodies to provide and manage routes across your land that would best help to integrate access and land management.
 - Considering what impact your work might have on people exercising access rights on neighbouring land and modifying your work where this is reasonably practicable.

SECTION 02: ACCESS MANAGEMENT IN PRACTICE

This section consists of a series of different access/land management scenarios. The scenarios are intended to represent the main types of topographical and business situations that land managers deal with. Each scenario illustrates potential access issues and offers a number of management options that can be used to help integrate access with other land management operations.

The scenarios do not cover every eventuality, but rather they address key points and concerns. While each scenario can stand alone, issues are also interchangeable between scenarios. It is hoped that land managers can use these as a guide and will be able to pick out the relevant issues and management options from the different scenarios to suit their own individual circumstances.

The outline information contained in the scenarios is supported by a series of more detailed fact sheets in section 3.

Scenarios:

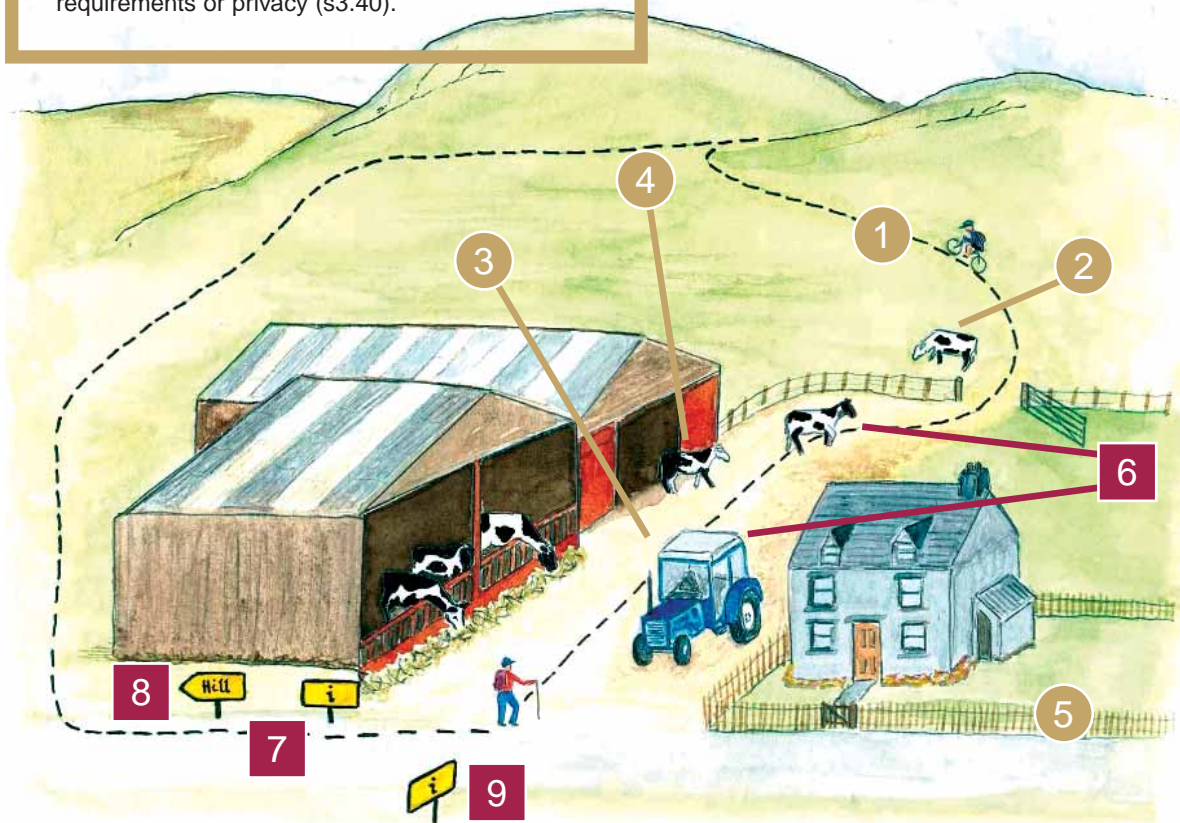
- 01: Farmyards.
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SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 01: FARMYARDS

POINTS TO REMEMBER:

Access rights do not extend to farmyards, except where a Right of Way or Core Path goes through the farmyard. However the Code encourages farmers to continue to allow people to go through farmyards where this would not interfere unreasonably with land management requirements or privacy (s3.40).



Potential Access Issues:

- 1 Frequent use of route through farmyard by users.
- 2 Cattle movement – potential hazard for users.
- 3 Vehicle movement – potential hazard for users.
- 4 Risk of transfer of disease between people, dogs and farm animals.
- 5 Breach of land manager's privacy/curtilage rights.

Management Options:

- 6 Carry out a risk assessment to identify potential hazards for users and actions that should be taken to reduce risks¹.
- 7 Put up a notice directing users to an alternative route around the farmyard.

- 8 Provide a waymarker to confirm the route to be taken^{2,3}.
- 9 If an alternative route is not possible, put up a notice advising users of: potential dangers; how they can help maintain biosecurity⁴; how they can comply with privacy/curtilage requirements⁵.

¹ See fact sheet 3 for information on risk assessment.

² See fact sheet 8 for information on signage.

³ See fact sheet 9 for information on funding.

⁴ See fact sheet 10 for information on biosecurity.

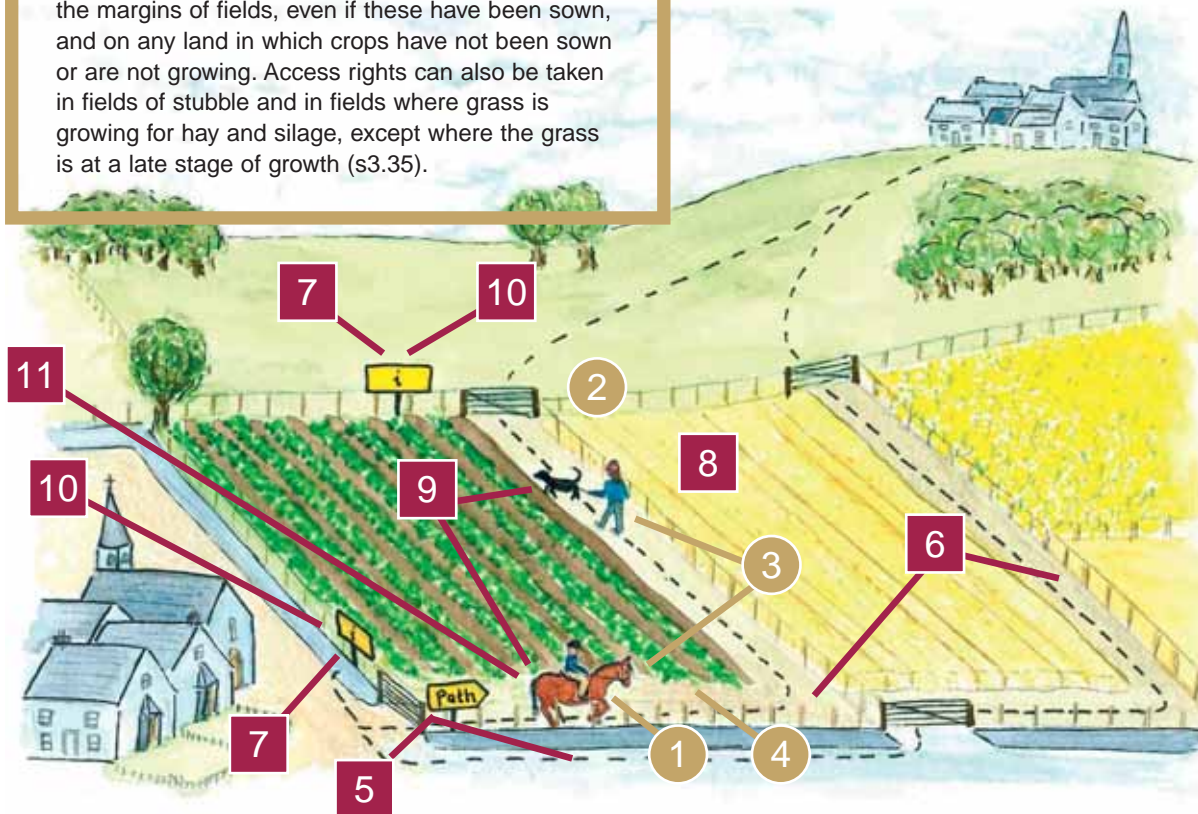
⁵ See fact sheet 1 for clarification privacy/curtilage provisions within the Act.

SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 02: FIELDS WITH CROPS

POINTS TO REMEMBER:

The Code states that the right of access extends to the margins of fields, even if these have been sown, and on any land in which crops have not been sown or are not growing. Access rights can also be taken in fields of stubble and in fields where grass is growing for hay and silage, except where the grass is at a late stage of growth (s3.35).



Potential Access Issues:

- 1 Users go through the field to gain access to a neighbouring village
 - risk of crop damage.
 - risk of littering.
- 2 Dog fouling – risk of crop contamination and transfer of disease.
- 3 Risk of injury to users from hazardous land management operations.
- 4 Horse riding on headlands – damage to field surfaces.

Management Options:

- 5 If practicable, use a waymarker to indicate an alternative route around the crop field^{1, 2} otherwise –
- 6 If practicable, leave a field margin free from crops.
- 7 Put up a notice requesting that: users and dogs keep on the path (if there is one) or keep to the field margin; users remove any dog faeces; users take their litter home; horse riders consider ground conditions before taking access.

- 8 If necessary, consult the local authority Access Officer regarding: provision of a dog waste bin; persistent dog fouling; surface degradation from horse riding³.
- 9 Carry out a risk assessment to identify potential hazards and actions that should be taken to reduce risks⁴.
- 10 For fields where access is frequently taken, put up a notice, when required, advising the public of potential dangers arising from crop spraying and/or farm machinery.
- 11 Work with local riding groups/stables to establish Best Practice agreements. Contact the SRPBA Access Officer re negotiation of Best Practice agreements with national user groups.

¹ See fact sheet 8 for information on signage.

² See fact sheet 9 for information on funding.

³ See fact sheet 5 for information on local authority Access Officers.

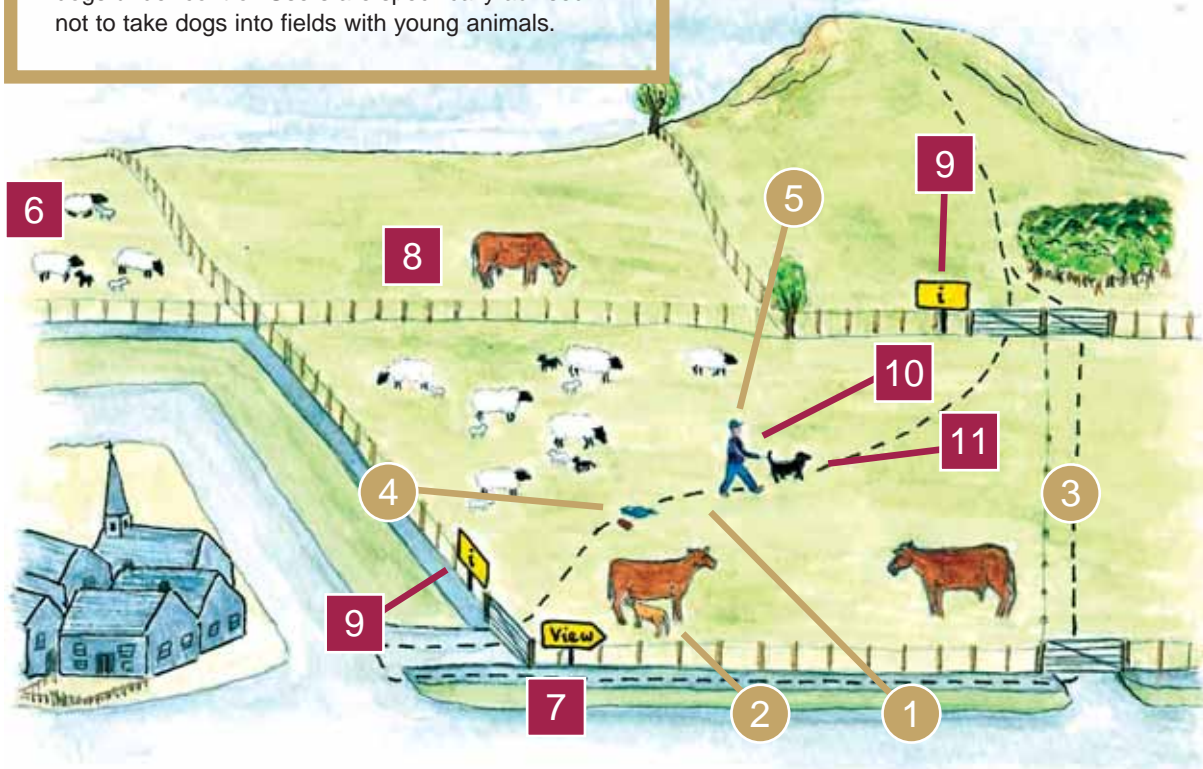
⁴ See fact sheet 3 for information on risk assessment.

SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 03: FIELDS WITH LIVESTOCK

POINTS TO REMEMBER:

The right of access does extend to fields with livestock. Sections 3.29 – 3.34 of the Code provides guidance on responsible behaviour when taking access in fields where there are farm animals. Sections 3.53 – 3.56 provide advice about keeping dogs under control. Users are specifically advised not to take dogs into fields with young animals.



Potential Access Issues:

- 1 Well used path going through a field with livestock.
- 2 Young animals in the field at times
 - risk of cows charging.
 - risk of mis-mothering.
- 3 Bull in the field at times
 - risk of injury to the public.
- 4 Litter – hazardous to animals and risk of transfer of disease.
- 5 Risk of transfer of disease between people, dogs and farm animals.

Management Options:

- 6 If reasonably practicable, keep young animals in another field.
- 7 Use a waymarker to direct users along an alternative route^{1, 2}.
- 8 If practicable, keep the bull in another field.

- 9 Put up a notice
 - explaining the dangers of litter and encouraging users to take their litter home with them.
 - requesting users to remove dog faeces.
- 10 If necessary, consult the local authority Access Officer regarding provision of a dog waste bin³.
- 11 If users persistently allow their dogs to foul, resulting in problems, contact the local authority Access Officer to discuss referral to the Local Access Forum⁴.

¹ See fact sheet 8 for information on signage.

² See fact sheet 9 for information on funding.

³ See fact sheet 5 for information on local authority Access Officers.

⁴ See fact sheet 2 for information on Local Access Forums.

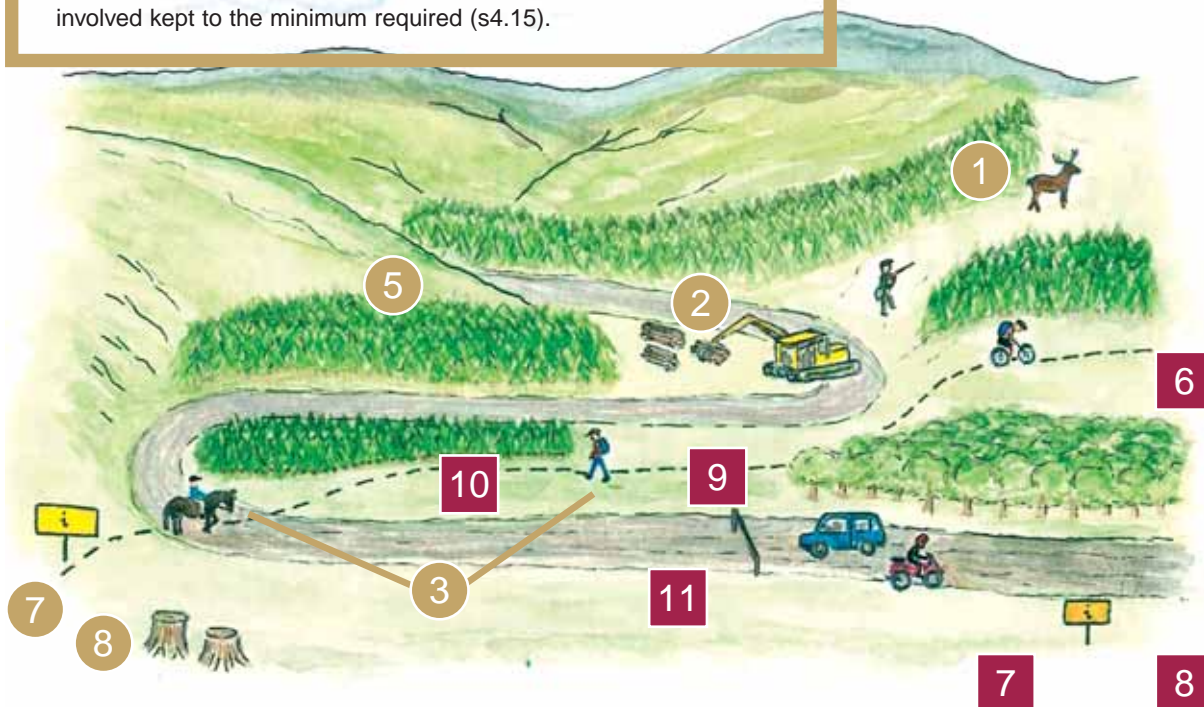
SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 04: WOODLAND

POINTS TO REMEMBER:

The Code states that the establishment of access rights does not prevent you from carrying out a wide range of land management operations as safely and effectively as possible. A key responsibility placed on users is not to hinder this work (s4.11).

People exercising access rights are encouraged to follow any precautions deemed necessary by the land manager. Precautions should be reasonable and practicable, with area and duration involved kept to the minimum required (s4.15).



Potential Access Issues:

- 1 Deer control – potential hazard to users.
- 2 Timber extraction – potential hazard to users.
- 3 Path used by walkers, horse riders and cyclists
 - risk of degradation of path surface.
 - risk of inter-user conflict.
- 4 Inappropriate access to forest tracks by cars and motorcyclists.
- 5 Damage to young plantations.

Management Options:

- 6 Carry out a risk assessment to identify potential hazards and action that should be taken to reduce risks¹.
- 7 Be aware of where recreational use is likely to take place. If necessary, put up a notice asking users to take an alternative route.
- 8 Put up a notice at access points giving details of where and for how long timber

fellings/extraction will be taking place. If possible, provide alternative routes².

- 9 If practicable, carry out work at times when public access is low, e.g. weekdays; winter.
- 10 Contact the local authority Access Officer to: discuss assistance with path maintenance³; refer persistent inter-user conflict to the Local Access Forum (LAF)⁴.
- 11 Erect a car/motorcycle barrier, ensuring that legitimate and disabled users can still gain access^{5, 6, 7}

¹ See fact sheet 3 for information on risk assessment.

² See fact sheet 8 for information on signage.

³ See fact sheet 5 for information on local authority Access Officers.

⁴ See fact sheet 2 for information on Local Access Forums.

⁵ See fact sheet 9 for information on funding.

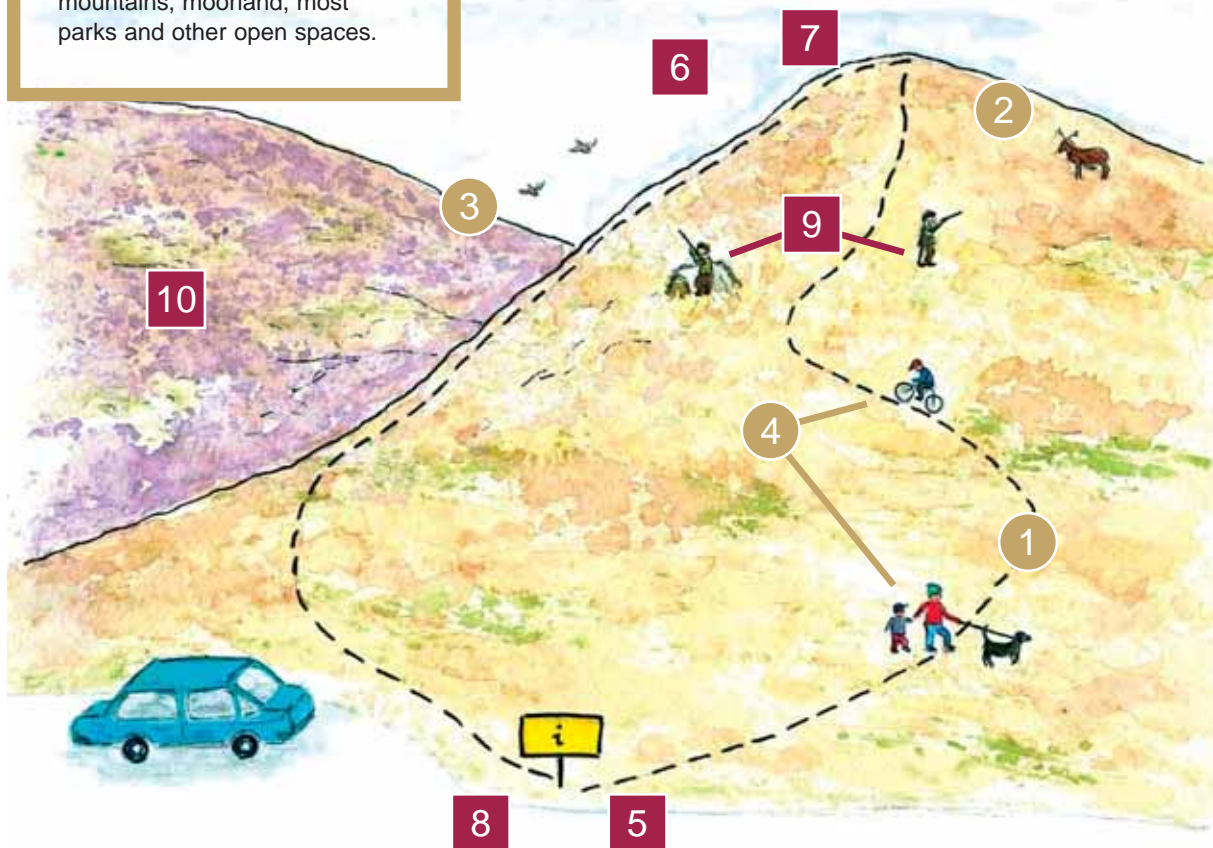
⁶ See fact sheet 11 for information on countryside structures.

⁷ See fact sheet 7 for information on the Disability Discrimination Act.

SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 05: OPEN GROUND/HILL GROUND

POINTS TO REMEMBER:
Section 2.2 of the Code states that the right of access can be exercised in places such as hills, mountains, moorland, most parks and other open spaces.



Potential Access Issues:

- 1 Popular route for users.
- 2 Risk of disruption to stag/hind stalking by users and dogs.
- 3 Risk of disruption to game bird shooting by users and dogs.
- 4 Risk of injury to users from gunshot or muirburn.

Management Options:

For stalking:

- 5 Put up a notice at access points giving day to day information on stalking activity and alternative route. Explain the need to keep dogs under close control.
- 6 Use the Hillphones service to inform users day to day of areas/routes to avoid and alternative routes¹.

- 7 Consider entering estate contact details on the "Heading for the Scottish Hills" website so that users can obtain information about estate activities and plan their visits accordingly².

For shooting:

- 8 Put up a notice informing users day to day of shoots and alternative routes.

For stalking & shooting:

- 9 Follow safety procedures for using guns³.
- 10 Follow safety procedures for muirburn⁴.

¹ See fact sheet 12 for information on Hillphones.

² See fact sheet 13 for information on "Heading for the Scottish Hills".

³ See fact sheet 14 for information on BASC Codes of Practice.

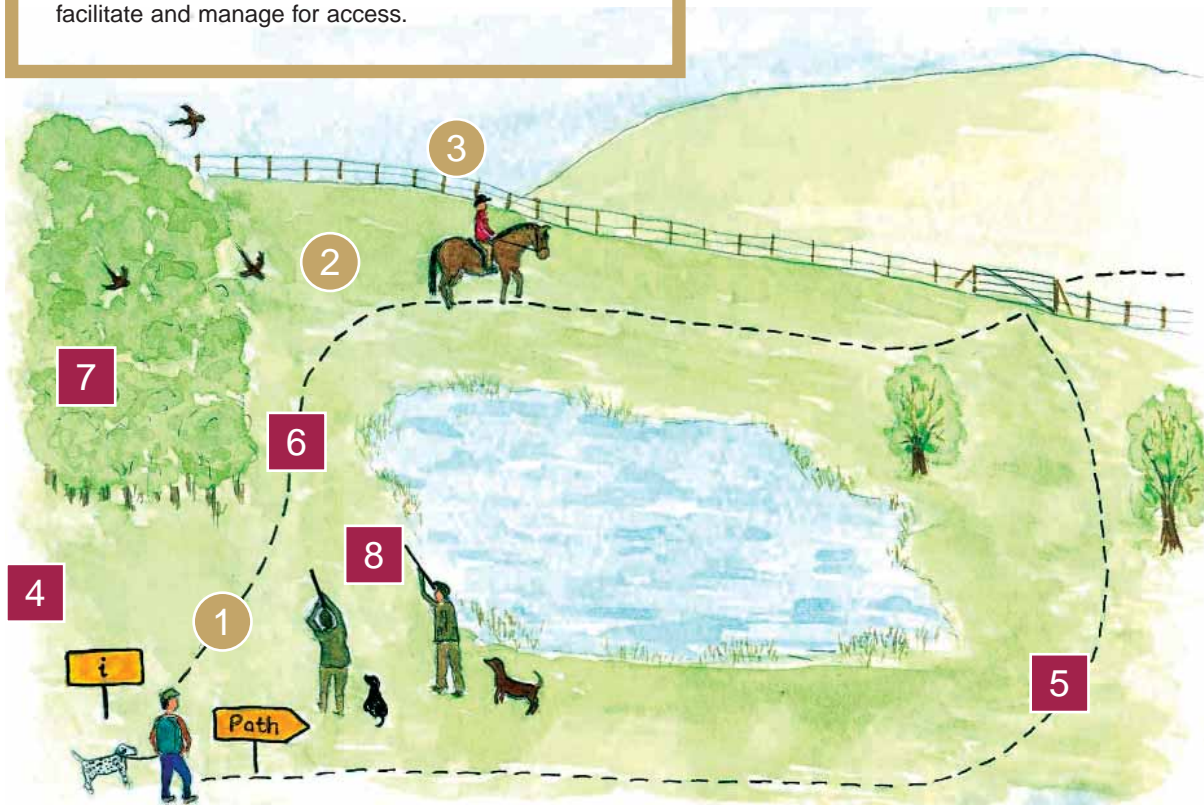
⁴ See fact sheet 16 for information on the Muirburn Code.

SECTION 02: ACCESS MANAGEMENT IN PRACTICE

SCENARIO 06: LOW GROUND

POINTS TO REMEMBER:

Section 4.19 of the Code encourages land managers who are experiencing relatively high levels of public access, managing land close to a town or city, or who believe that access is causing problems for their work or for the environment, to work with the local authority, Local Access Forums and others to help facilitate and manage for access.



Potential Access Issues:

- 1 Risk of disruption to shoots by users and dogs.
- 2 Risk of disturbance of game in release pens.
- 3 Risk of injury to users from gunshot.

Management Options:

- 4 Put up a notice at access points informing users, day to day, of areas/routes where shoots will take place. Explain the need to keep dogs under close control¹.
- 5 If practicable, offer an alternative route (on a path if possible) to direct users away from shoot areas².

- 6 If shoots are frequently disturbed, refer the matter to the Local Access Forum³.
- 7 Locate release pens away from well-used paths or tracks.
- 8 Follow safety procedures for using guns⁴.

¹ See fact sheet 8 for information on signage.

² See fact sheet 9 for information on funding.

³ See fact sheet 2 for information on Local Access Forums.

⁴ See fact sheet 14 for information on BASC Codes of Practice.

SECTION 03: FACT SHEETS

The following fact sheets supplement information given in sections 1 and 2. Wherever possible, a source of further information is also provided.

Fact Sheets:

- 01: The Land Reform (Scotland) Act 2003 – Part 1 Access Rights.
- 02: Local Access Forums.
- 03: Risk Assessment.
- 04: Liability and the Occupier's Liability (Scotland) Act 1960.
- 05: Local Authority Access Officers.
- 06: Model Path Agreement.
- 07: The Disability Discrimination Act 1995.
- 08: Signage.
- 09: Main Sources of Funding for Access.
- 10: Biosecurity.
- 11: Countryside Structures.
- 12: Hillphones.
- 13: Heading For The Scottish Hills.
- 14: British Association for Shooting & Conservation: Codes of Practice.
- 15: Protection of Nature Conservation Interests.
- 16: The Muirburn Code

SECTION 03: FACT SHEETS

FACT SHEET 01: THE LAND REFORM (SCOTLAND) ACT 2003 – PART 1 ACCESS RIGHTS

Please remember that the following is an abridged summary of those parts of the Act most relevant for land managers, and not a definitive statement of law.

The Right of Access

There is a right to be – for recreational, relevant educational, or commercial/for profit purposes – below, on, above, or to cross most land and inland water in the countryside. The right of access applies to all non-motorised activities.

This means that, for example, people can take access to walk, horse ride, cycle, wind-surf, picnic, take part in a mountaineering skills course or take part in a commercial pony trek.

The existence or exercise of access rights do not diminish or displace any other rights (whether public or private) of entry, way, passage or access.

In relation to Rights of Way (ROW) this means that:

- Existing ROW will be preserved.
- New ROW can continue to be created.
- ROW will exist over land over which access rights do not apply (see below).
- Not all conduct excluded from access rights is prohibited on a ROW. For example, vehicular access may be permitted on a ROW.
- The power to exempt particular land from access rights does not affect ROW.
- ROW will exist irrespective of whether or not they are signposted.

Responsibilities Attendant to the Right

Users:

Have a duty to exercise access rights responsibly so that there is no unreasonable interference with any of the rights (of ownership of land, access or any other) of any other person.

Land Managers:

Have a duty to respect the right of access by responsible management and ownership of the land, so that there is no unreasonable interference with any other person exercising access rights.

The Right Of Access Does Not Apply To

Land on which there is:

- A building or other structure or works, plant or fixed machinery – for example, cattle sheds, water collection tanks, milking equipment etc.
- A caravan, tent or other place affording a person privacy or shelter.

Land in which:

- Crops have been sown or are growing. (Although access does extend to the margins of fields where crops have been sown or are growing).

*N.B. Forests are **not** excluded from the right of access.*

Land which:

- Forms the curtilage of a building, which is not a house, or of a group of buildings, none of which is a house – for example the area immediately surrounding a game larder.
- Forms a compound or other enclosure containing any structure, works, plant or fixed machinery.
- Is contiguous to and used for the purposes of a school.
- Comprises, in relation to a place of residence, sufficient adjacent land to ensure reasonable measures of privacy.

Note:

Most commonly, this land would comprise a garden surrounding a private residence. Clear boundaries (walls, hedges, fences), lawns, flowerbeds, sheds and glasshouses etc may distinguish garden areas. The right of access does not extend to parts of the policies that are intensively managed for domestic enjoyment, but less intensively managed parts of the wider policies may not be regarded as a garden and so access rights can be exercised. Access can also be taken along driveways, except where the ground becomes a garden, and by gatehouses and other buildings.

Land which:

- Has been developed and set out as a sports or playing field, or for a particular recreational purpose, e.g. equestrian course.
- For not fewer than 90 days in the year ending on 31st January 2001, members of the public were admitted only on payment, and after that date, **and** for not fewer than 90 days in each year beginning on 1st February 2001, members of the public are, or are to be, so admitted.

Conduct Excluded From The Right Of Access

The right of access does not extend to:

- Those who are on or crossing land in breach of an interdict or other order of a court.
- Those who are on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court. That is, criminal behaviour.
- Hunting, shooting or fishing – these activities will still require the permission of the landowner.
- Those on or crossing land for the purpose of taking away, for commercial purposes or for profit, anything in or on the land.
- Those on or crossing land in or with a motorised vehicle or vessel (other than one which has been constructed or adapted for use by a person who has a disability and which is being used by such a person).
- Those on or crossing land while responsible for a dog or other animal, which is not under proper control.

Note:

The Code states that what is meant by "proper control" can vary according to individual circumstances and the type of place being visited. Detailed guidance on the responsibilities incumbent on dog owners, when exercising access rights, is provided in the Code.

Power To Exempt Particular Land From Access Rights

- The local authority may (whether on application made to them or not), by order, exempt a particular area of land from the right of access for a particular purpose and for a specified period of time.
- Local authorities can approve orders for up to five days. Exemption orders of six or more days, and up to two years, require landowner and public consultation, and must be confirmed by Ministers.
- Events where exemption orders would be applicable would include community and social events, agricultural shows, tournament or car rallies, wedding receptions, car boot sales and music festivals.

Exemption orders will generally apply where a temporary entry charge is planned, and will not usually be used for the purposes of land management operations.

SECTION 03: FACT SHEETS

FACT SHEET 01: THE LAND REFORM (SCOTLAND) ACT 2003 – PART 1 ACCESS RIGHTS (CONTINUED)

Duty Of Local Authority To Uphold Access Rights

It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised. The local authority may institute and defend legal proceedings and generally take such steps as they think fit, in fulfilment of the duty to uphold access rights.

Prohibition Signs, Obstructions, Dangerous Impediments

Landowners shall not, for the purpose or main purpose of preventing or deterring access rights:

- Put up any sign or notice.
- Carry out any agricultural or other operation on the land.
- Put up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation.
- Position or leave at large any animal.
- Take, or fail to take, any other action.

This means that the land manager cannot unreasonably carry out any of the above activities. However, there may be occasions where it would be reasonable to temporarily restrict public access, for example for reasons of public safety, bio-security etc.

Where the local authority considers that anything has been done to prohibit access they may, by written notice served on the owner of the land, require that remedial action be taken by the landowner within a specified period of time.

If the landowner fails to comply with such a notice, the local authority may take the remedial action specified in the notice, and recover from the landowner such reasonable costs incurred by taking the remedial action.

A landowner on whom a notice has been served may, by application to the sheriff, appeal against it.

Core Paths Plan

It is the duty of the local authority, not later than 3 years after enactment of the access legislation, to draw up a system of "core paths" sufficient for the purpose of giving the public reasonable access throughout their area.

A system of core paths may include rights of way, paths and tracks provided under any other legislation, paths which are or may be delineated by a path agreement, or any other route.

In drawing up the plan, the local authority shall have regard to the need to balance the exercise of access rights and the interests of the landowner. This means that local authorities should consult land managers with regard to core path plans.

Power To Maintain Core Paths etc

The local authority may do anything they consider appropriate for the purposes of:

- Maintaining a core path.
- Keeping a core path free from obstruction or encroachment.
- Providing the public with directions to, or with an indication of the extent of, a core path.

Ploughing

When in accordance with good husbandry, nothing in the access legislation prevents a core path or right of way from being ploughed.

The owner of the land being ploughed shall reinstate the core path or right of way within 14 days.

An owner who fails to reinstate a core path or right of way within 14 days will be guilty of an offence and liable on summary conviction to a fine. If the owner fails to reinstate the core path or right of way the local authority may, after giving 14 days notice, take all necessary steps to reinstate the core path or right of way and recover all reasonable expenses from the landowner.

Local Access Forums

Each local authority shall establish for its area at least one local access forum to carry out the functions of:

- Advising the local authority, and any other body consulting the forum, on matters to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths.
- To offer and give assistance towards the resolution of disputes.

A local access forum will consist of persons appointed to it by the local authority.

Appointments to the local access forum shall include representatives of bodies and persons with an interest in the exercise of access rights, bodies representative of landowners, and owners of land.

The local authority should ensure a reasonable balance among the different interest groups on the forum.

Judicial Determination Of Existence And Extent Of Access Rights And Rights Of Way

On summary application, the sheriff shall determine:

- Land over which access rights are, or are not, exercisable.
- Whether or not access rights have been exercised responsibly.
- Whether or not management or ownership of the land has been conducted responsibly, in respect of the exercising of access rights.
- Whether a path, bridleway or other route is, or is not, a right of way.

Further Information

Copies of the Land Reform (Scotland) Act 2003 can be obtained from:

The Stationery Office, 71 Lothian Road, Edinburgh EH3 9AZ

Tel: 0870 606 5566 Fax: 0870 606 5588

Or online at: www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2003/20030002.htm

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SECTION 03: FACT SHEETS

FACT SHEET 02: LOCAL ACCESS FORUM

Functions

The aim of a Local Access Forum (LAF) is to bring together different parties with an interest in developing and managing access. Through open discussion, consensus and co-operative working, LAF members seek to increase understanding and to advance the agreed objectives for access development and management in the area.

The requirement for each local authority to establish a Local Access Forum (LAF) for its area is set out in section 25 of the Land Reform (Scotland) Act 2003. The Act stipulates that the functions of a LAF are:

To advise the local authority, and any other person or body consulting the LAF, on the exercising of access rights, the existence and delineation of Rights of Way (ROW), and the drawing up and adoption of a core path network plan.

To offer and give assistance in disputes relating to any of the matters listed directly above and the use of core paths.

In practice, the functions of an LAF are likely to be:

- Informing, raising awareness and generating discussion.
- Involving members in access strategy and developing policy links.
- Co-ordinating access projects and initiatives.
- Advising and problem solving.

The LAF can therefore provide a useful and practical support mechanism for land managers.

Structure

The structure of an Access Forum can vary from a stable standing committee format to a more fluid multi-faceted system. The multi-faceted system facilitates inclusion of a large number of interested parties, or extensive geographic areas, while ensuring that the LAF remains effective. Such a system may comprise:

A Wider Access Forum – open to everyone with an interest in access and no limit on numbers. This LAF would meet once or twice a year at a conference or seminar.

A Statutory Forum – would be elected from the wider Forum and would co-ordinate and direct the business of the LAF. The Statutory Forum (LAF) would meet about four times a year.

Working Groups – would be formed as and when required to work on specific topics or areas, e.g. developing a signage strategy or focusing on access development in a particular area. Membership of Working Groups may be drawn from the Statutory Forum, the Wider Forum or the wider community.

There would be continual feedback to and from all dimensions of the Forum.

Membership

LAF membership should include representatives of all interested parties. Potential members may include land managers (either as individual land managers or as representatives of land management organisations such as SRPBA, NFUS, British Waterways, Scottish Crofters' Foundation), users (either as individual users or as representatives of recreational organisations such as Scottish Canoe Association, Ramblers' Association Scotland), community groups (e.g. community councils, local residents, local path groups), agencies (e.g. local authority officers and elected members, SNH, Local Enterprise Companies).

While there should be a broad balance of representation between the member organisations, the LAF should also be able to work effectively. The size of potential membership may therefore determine the structure of the LAF.

Details of LAF membership, structure and function are available, on request, from the local authority Access Officer. Please refer to fact sheet 5 of this Guidance for contact details of local authority Access Officers, and to the following websites:

- Scottish Natural Heritage: www.outdooraccess-scotland.com
- The Paths For All Partnership: www.pathsforall.org.uk

Appointment of SRPBA Members to LAFs

The local authority would approach relevant member organisations (e.g. SRPBA) seeking nominations. Potential member organisations would put forward nominees, but it is ultimately the local authority that is responsible for making appointments to the LAF.

For the SRPBA, the selection process for LAF representatives is:

- SRPBA National Office is contacted by the local authority seeking SRPBA representative(s).
- SRPBA National Office contacts the Chairman and Regional Manager for the relevant area.
- The issue is put on the Agenda for the Regional Committee meeting, and the Committee is asked to suggest/recommend potential candidates.
- Candidates are contacted by the Regional Chairman in the first instance.
- Provided the candidate meets the requirements, they are nominated to represent the SRPBA, and this is ratified at the next Regional Committee meeting.

SRPBA members serving on LAFs will be required to represent wider land management interests, not just SRPBA and/or personal land management interests.

Some LAFs may stipulate a maximum term of appointment for members. This may be between 1 and 3 years, and may allow for appointments to be renewed as required.

Administration

Provisions within Part 1 of the Land Reform (Scotland) Act 2003 permit local authorities to reimburse the expenses of LAF members. Although this power is discretionary and will therefore, in effect, vary between local authorities. The local authority will also meet LAF running costs.

The National Access Forum

The National Access Forum (NAF) was formed in 1994 to encourage dialogue between recreation and land management interests, and other agencies with an interest in access to the countryside. During the parliamentary process of the Land Reform (Scotland) Bill the NAF advised Scottish Natural Heritage (SNH) and the Scottish Executive on a draft Scottish Outdoor Access Code.

Between March and June 2003 SNH conducted a national consultation on the future function, structure and membership of the NAF. From the consultation exercise it was decided that:

Functions

The NAF has overarching aims which link closely to the terms of the Land Reform (Scotland) Act 2003, and should help to:

- Facilitate responsible enjoyment of the outdoors.
- Encourage responsible management of land and water in relation to access.
- Ensure that the reasonable needs of privacy, safety and conservation are safeguarded.

SECTION 03: FACT SHEETS

FACT SHEET 02: LOCAL ACCESS FORUM (CONTINUED)

Structure

There will be a single NAF covering all relevant land and inland water issues.

Membership

There will be a membership of 25, comprising representation from 24 bodies plus a Convenor, with a balance in the number of bodies representing recreation and land management interests. Composition of the NAF is shown in the table below:

NATIONAL ACCESS FORUM COMPOSITION			
CONVENOR			
Recreation Bodies	Land Management Bodies	Public Bodies	Other Bodies
Ramblers Association Scotland	Scottish Rural property & Business Association	Scottish Natural Heritage (non-voting)	Activity Scotland
Mountaineering Council of Scotland	National Farmers Union Scotland	Confederation of Scottish Local Authorities	Scottish Advisory Panel for Outdoor Education
Scottish Canoe Association	British Association for Shooting & Conservation	Forestry Commission	Royal Society for the Protection of Birds Scotland
Cyclists Touring Club	Association of Deer Management Groups	Scottish Water	Farming & Wildlife Advisory Group
British Horse Society	Forestry & Timber Association	Sportscotland	Scotways
Scottish Sports Association	Historic Houses Association	National Park Authorities	Local Access NAFs

Administration

Secretariat is provided by SNH. The NAF elected a convenor by voting on nominations submitted by members.

The NAF will adopt a number of approaches to encourage efficient communication with all interested parties:

- Only full members of the NAF (as tabled above) can attend meetings. However, a much larger group of corresponding members can submit papers or contribute points for discussion by means of the full members or the NAF Secretariat. NAF papers are circulated to all of these bodies.
- Full NAF members accept their seat at the table on the understanding that they are representing wider constituencies of interested bodies, and that they will communicate efficiently with these constituencies.
- The NAF can establish sub-groups to address specific issues, and these may provide an opportunity for direct involvement of corresponding members with relevant expertise.
- NAF papers will be posted on the SNH website.
- There will be an annual open meeting at which members of the public can ask questions of NAF members.

The NAF will fulfil an advisory function to SNH and Local Access Forums. Regular liaison with Local Access Forums will inform the NAF of the practical implications of the access legislation and the Code.

Further Information

HMSO, 2003, Land Reform (Scotland) Act 2003, TSO, Edinburgh
www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2003/20030002.htm

Paths For All Partnership, Local Access Forums: A Guide to Good Practice, PFAP, Alloa
www.pathsforall.org.uk

SNH, 2003, Establishing A New National Access Forum for Scotland: paper for SNH BOARD MEETING:
11 November 2003 www.snh.gov.uk/data/boards_and_committees/main_board_papers/03713.pdf

SNH, 2003, A National Access Forum for Scotland: Proposals for the Future
www.snh.gov.uk/pdfs/SOAC/AccessForumconsultationreport.pdf

SNH, 2003, A National Access Forum For Scotland: A Consultation Paper
www.snh.gov.uk/pdfs/access/acc_for.pdf

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SECTION 03: FACT SHEETS

FACT SHEET 03: RISK ASSESSMENT

Where the land manager has decided that a risk assessment is required, the following information is designed to assist in the risk assessment process.

It is not practical, possible, or desirable to provide visitors to the countryside with a risk-free environment. While visitors must take reasonable care for their own safety, land managers also owe people on their land a duty of care.

Risk is the likelihood that harm will result from exposure to a hazard. The level of risk will depend on the likelihood of harm arising, and will usually be classified between extremely low (insignificant/trivial) and extremely high (unacceptable/intolerable). The following tables may help to assess levels of risk and identify whether or not risk control measures are required. The aim of risk control is to reduce risk to an acceptable level. It is not usually possible to eliminate it altogether.

Such risk control measures may go some way to satisfying the terms of the Occupiers' Liability (Scotland) Act 1960, the Health & Safety at Work Act 1974, and other legislation concerned with "duty of care".

The risk control matrix, below, and the level and consequence of risk matrix, over, provide schematic models from which to consider risk assessment in general.

RISK CONTROL MATRIX

WILD TERRAIN	RUGGED TERRAIN	RURAL TERRAIN	SEMI-URBAN	URBAN TERRAIN
Extremely rugged terrain, perhaps also remote. High level of fitness required. No access facilities for the less able	Rugged terrain. Reasonable level of fitness required. Access facilities for the less able unlikely.	Varied terrain. Modest level of fitness required. Limited access for the less able.	Terrain slightly less intensively managed. Accessible for most ages and abilities.	Easy terrain. Accessible for all ages with full facilities for the less able.
EXPECTATION OF LEVEL OF USER'S SKILL AND SELF RELIANCE				
ADVANCED	MODERATE	MINOR	MINIMAL	MINIMAL
Activities may include rock and ice climbing, paragliding, extreme mountain biking, endurance & long distance mountaineering and hiking. Advanced personal safety skills, training and experience of first aid, leadership, personal safety and self-reliance would be expected and regarded as essential.	Activities may include high level hill walking/scrambling, white water rafting, advanced level mountain biking over challenging forest and mountain trails. Skills and knowledge of basic first aid, personal safety and self-reliance would be expected and regarded as important	Activities may include mid level hill walking on and off paths, intermediate level mountain biking/cycling on estate/farm tracks and cycle paths, canoeing on lochs and moderate flow rivers, horse riding on bridle paths and enclosed land. Understanding of emergency first aid, personal safety and self-reliance regarded as desirable but not expected.	Activities may include walking/rambling, dog walking, cycling and horse riding on promoted routes that receive a lower level of maintenance, and on unpromoted routes. Skills and experience of emergency first aid, personal safety and self-reliance not expected	Activities may include walking/rambling, dog walking, cycling and horse riding on promoted routes that receive a high level of maintenance. Skills and experience of emergency first aid, personal safety and self-reliance not expected.
LEVEL OF REQUIRED RISK CONTROL MEASURES (WHERE THERE IS A HAZARD)				
None / minimal	Few warning signs. Limited use of physical safety measures.	Some warning signs and physical safety measures likely.	Warning signs and physical safety measures expected.	Warning signs, barriers and welfare provision expected.

Risk Assessment Considerations

The Health & Safety Executive (HSE) suggest a 5 step process for risk assessment in general:

1. Look for the hazards.
2. Decide who might be harmed and how.
3. Evaluate the risks and decide whether the existing precautions are adequate or whether more should be done.
4. Record your findings.
5. Review your assessment and revise it if necessary.

The above 5 steps provide a straight-forward, practical approach to generic risk assessment. In relation to access, specific considerations may be:

- Accidents that could happen and how they could be caused.
- Look at accidents that might occur for different activities, e.g. walking, cycling, horse riding, canoeing, swimming.
- Consider inter-user conflict.
- Consider special events, e.g. festivals, rallies etc.
- Record the findings of your risk assessment.
- Decide if current risk control measures are adequate.
- Review risk assessments on a regular basis and in response to significant incidents or changing visitor patterns.
- Be pragmatic, focus on significant hazards that could result in serious harm, or affect several people.
- Consider the types of problems and how often they have occurred.
- Consider visitor profiles, e.g. numbers, age, ability, experience, and assess risks through the eyes and minds of visitors.
- Look at accidents that might occur at different locations.
- Learn from experience.
- Consider levels of use and any potential changes/increase in levels of use.

Risk Control Options

When deciding on risk control measures, strike a balance between the degree of risk, the nature of the site (e.g. a recreation facility as opposed to a working farm), the impact on the site, the terrain, the cost and the ability of the visitor to take reasonable care for their own safety. Risk control measures do not always have to be taken if the hazard presents an obvious danger and can be easily avoided.

Risk control options may include:

- Doing nothing – if the hazard is unlikely to harm anyone.
- Eliminate the hazard – if it is reasonable and practicable and/or there is an intolerable degree of risk.
- Minimise the risk of contact with the hazard – for example by channelling users away from it.
- Physical control measures – such as barriers, directional signage, temporary limitations to access, diversions.
- Inform and educate visitors about the risks – by means of information & interpretation boards, leaflets, signs, ranger services.
- Emergency response measures – appropriate to the nature and remoteness of the site. For example, in remote areas the emergency response may be to call out the rescue services.

LEVEL AND CONSEQUENCE OF RISK

LIKELIHOOD OF PROBLEM OCCURRING	SEVERITY OF CONSEQUENCE			
		Slight Harm	Harmful	Extremely Harmful
Unlikely	Minor risk	Slight risk	Substantial risk	Substantial risk
Likely	Slight risk	Moderate risk	Substantial risk	Substantial risk
Very Likely	Moderate risk	Substantial risk	Substantial risk	Intolerable risk

(Consider level of risk for each hazard)

Further Information

HSE, 1999, Five Steps to Risk Assessment, HSE, Sudbury
<http://www.hse.gov.uk/pubns/indg163.pdf>

HSE, 2003, Managing Health & Safety in Forestry (INDG294), HSE, Sudbury
<http://www.hse.gov.uk/pubns/indg294.pdf>

HSE Free Leaflets
<http://www.hse.gov.uk/pubns/index.htm>

Visitor Safety in the Countryside Group,
 2003, Managing Visitor Safety in the Countryside: Principles and Practice,

The Safety & Reliability Society,
 Clayton House,
 59 Piccadilly,
 Manchester M1 2AQ,
 Tel: 0161 228 7824
 Fax: 0161 236 6977
www.vscg.co.uk

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SECTION 03: FACT SHEETS

FACT SHEET 04: LIABILITY AND THE OCCUPIERS LIABILITY (SCOTLAND) ACT 1960

Liability, the Access Legislation and the Scottish Outdoor Access Code

The issue of liability is a concern for many landowners and land managers. Unfortunately liability is not dealt with in the Scottish Outdoor Access Code or in the recently published Scottish Executive draft guidance to local authorities. In response to the on-going level of concern over liability, Scottish Natural Heritage does intend to produce advice on this particular matter in due course. In the meantime, the following information is offered in the context of uncertainty over how liability issues will be dealt with by the courts once the access legislation and the Code come into force.

The terms of the Occupiers Liability (Scotland) Act 1960 remain unaffected by the access legislation. This means that the landowner or land manager will continue to have a duty of care towards the public. Moreover, duty of care requirements and the degree to which the landowner is held liable for injury or loss may increase where a path or route is actively promoted. More detail on this Act is offered below.

There is provision within the access legislation for local authorities to maintain paths or to provide for the maintenance of paths, i.e.

Section 19(a) – discretionary power to maintain a core path, and

Section 21(1) – power to enter into a path agreement for the delineation and maintenance or, ...for the delineation, creation and maintenance of a path...

While the legislation clearly provides discretionary powers for local authorities to maintain core paths and enter into path agreements, there is no such clarity with regard to liability in these situations.

Local authorities will also have the power to secure access rights by means of a path order (s22). Paths delineated by path order may be regarded as being within the control of the local authority, which would then be subject to the terms of the Occupiers' Liability (Scotland) Act 1960 (s22(4)).

For routes that are not adopted as a core path, there may be the option of entering into a path agreement with the Council, depending on the importance of the route for public amenity, whereby arrangements for management and maintenance can be agreed upon. When drafting a path agreement, the issue of liability should be discussed with the local authority. If a path agreement between a land manager and the Council were to be considered further advice should be sought on the legal aspects of such agreements. The SRPBA would be able to offer guidance on this, although members will need to consult their own legal adviser on the specific details of the agreement.

The Occupiers Liability (Scotland) Act 1960

Under the Occupiers Liability (Scotland) Act 1960, a person occupying or having control of land or other premises is required to take reasonable care to ensure that people entering the land which is under their control do not suffer injuries or damages as a result of failure to take reasonable precautions to minimise dangers to these people.

The assessment of what is reasonable care depends on such factors as the age of the person coming on to the land, the conditions under which they come on to the land, whether he or she has been invited on to the land or not and so forth. A notice giving warning of dangers and purporting to exclude liability will not be effective as such, but may be a factor in assessing whether the appropriate standard of care has been met. For example, if an occupier reasonably ought to have known that children might enter his or her premises and a child is involved in an accident there, the appropriate standard of care may be deemed not to have been met. What is reasonable in relation to one person may not be in relation to another.

In relation to a known hazard or potential hazard, the state of knowledge and understanding of the entrant to the premises or land is a material factor just as is whether or not the particular accident that was caused was a result of recklessness. The precautions, which require to be taken by the occupier of land in relation to a hazard, do not require to reach the standard of providing absolute protection for all persons from the hazard, but they ought to be in proportion to reasonably foreseeable risks arising from it.

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SECTION 03: FACT SHEETS

FACT SHEET 05: LOCAL AUTHORITY ACCESS OFFICERS

Access Officers are concerned with improving and developing access to Scotland's countryside and greenspace. Many Access Officers are employed by local authorities, while others work for the National Parks Authorities, countryside trusts, recreation and conservation organisations and Scottish Natural Heritage.

Under the terms of Part 1 of the Land Reform (Scotland) Act 2003 it will be the duty of local authorities to uphold access rights. Local authority employed Access Officers will therefore play a key role in developing and negotiating access in local authority areas.

Below is a list of contact telephone numbers for every local authority Access Officer (where posts exist). Because personnel can often change, names are not given. However, space is provided alongside the telephone numbers for the name of current Access Officers to be pencilled in.

Up-to-date and accurate information on local authority Access Officers can also be obtained from:

- Scottish Natural Heritage's access website at: www.outdooraccess-scotland.com
- The Paths For All Partnership website at: www.pathsforall.org.uk

Note:

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It is for general information only, and must never be relied upon as any substitute for appropriate professional advice, which should always be taken in any situation in which financial or other interests may be at stake. No liability can be accepted by SRPBA or its employees for any misstatement in it or omission from it.

LOCAL AUTHORITY ACCESS OFFICERS

	TELEPHONE NUMBERS	NAME OF ACCESS OFFICER
Aberdeen	☎01224 523316	
Aberdeenshire	☎01467 620981	
Angus	☎01307 461460	
Argyll & Bute	☎01546 604314 ☎01546 604228	
Clackmannanshire	☎01259 452523	
Dumfries & Galloway (Stewartry)	☎01387 260145 ☎01557 332530	
Dundee	☎01382 433748	
East Ayrshire Coalfield SIP Project	☎01563 554748 ☎01563 554750 ☎01563 554751 ☎01563 554752	
East Dunbartonshire	☎0141 578 8523	
East Lothian	☎01620 827671	
East Renfrewshire	☎0141 577 3882	
Edinburgh City	☎0131 447 7145	
Falkirk	☎01324 504721	
Fife	☎01592 748334 ☎01592 414316	
Glasgow City	☎0141 287 8585	
Highland:		
Inverness	☎01463 702257	
Caithness & Sutherland	☎01408 622676	
Lochaber, Skye & Lochalsh	☎01397 707050	
Nairn, Badenoch & Strathspey	☎01497 873788	
Ross & Cromarty	☎01349 868431	
Inverclyde	☎01475 712417	
Midlothian	☎0131 561 5303	
Moray	☎01343 563289 ☎01343 557050	
North Ayrshire	☎01294 225198	
North Lanarkshire	☎01236 737545	
Orkney Isles	☎01856 888750	
Perth & Kinross	☎01738 475255 ☎01738 475347 ☎01738 475348	
Renfrewshire	☎0141 842 5258	
Scottish Borders (Scottish Borders Paths)	☎01835 824632 ☎01835 824000	
Shetland Isles	No post	
South Ayrshire	☎01294 616649	
South Lanarkshire	☎01698 455938	
Stirlingshire	☎01786 442937 ☎01786 442932	
West Dunbartonshire	☎01389 737376	
West Lothian	☎01620 825581	
Western Isles	☎01851 709491	

NATIONAL PARK AUTHORITY ACCESS OFFICERS

Cairngorms	01479 873535	
Loch Lomond & The Trossachs	01389 722618 01389 722624	

SECTION 03: FACT SHEETS

FACT SHEET 06: MODEL PATH AGREEMENT

Scottish Natural Heritage (SNH) has developed a model path agreement for discretionary use by local authorities, National Park Authorities (hereafter referred to as local authorities) and land managers. SRPBA has acted as a consultee in the development process.

Path agreements would apply to land where rights of responsible access already exist. For this reason path agreements may be considered less legally onerous than current access agreements. For example, there will not be the need to incorporate path agreements into property deeds, as the agreement will not be altering any third party's (public) legal rights.

Instead, path agreements may be regarded as being more akin to business / maintenance contracts between two parties (land manager and local authority), which do not change matters for anyone other than those two parties. Path agreements are not likely to be used for every path, or indeed every core path, but they may be a useful mechanism for clarifying management arrangements for paths of particular public importance.

The model path agreement, as developed by SNH, is shown overleaf. This model provides an exemplar for adaptation by local authorities and land managers to suit individual needs and circumstances. As such the model path agreement will be included in the Scottish Executive Guidance for Local Authorities on how they (local authorities) should fulfil their duties under the access legislation.

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Model Path Agreement

PATH AGREEMENT

between

_____ Council/National Park Authority, address:

(hereinafter referred to as 'the Local Authority'),

and _____

address: _____

(hereinafter referred to as 'the Owner'), being the [owner/tenant/crofter] of the property situated in [name of area] and known as [name of property].

1. This Agreement is a Path Agreement under Section 21 of the Land Reform (Scotland) Act 2003, ('the Act') for the [delineation / creation / improvement] and maintenance of a path within land in respect of which access rights are exercisable. Nothing in this Agreement shall diminish or displace the rights, responsibilities, duties or powers under the Act or under the Scottish Outdoor Access Code of either party, nor of any third party nor of the public.

2. Delineation

The path is as shown delineated in red on the plan attached and signed (Annex One).

3. Creation / Improvement of the Path

The Local Authority shall [create / improve] the path through the installation of [surfaced pathway / boardwalk / bridge / gate / fence / signposts / way markers / information board / launching point / moorings / seat / other] (as specified in Annex Two), all at its own expense.

4. Maintenance / Management of the Path

The Local Authority, or its approved agent (as set out in paragraph 15) shall manage and maintain these specified pathworks for the duration of the Agreement (as detailed in Annex Three). Access for such management and maintenance work shall be taken under the terms and conditions of Section 26 of the Act, and under such agreed additional terms as may be set out in Annex Three.

5. Promotion

The Local Authority shall be allowed to promote and encourage public use of the route. The Local Authority will encourage, by reasonable means, users of the route to behave responsibly in keeping with the Scottish Outdoor Access Code.

6. Public Right of Way

Nothing in this Agreement shall create or extinguish any public right of way.

7. Reimbursement for Quantifiable Losses

Where the Owner suffers actual and quantifiable losses resulting from this path agreement, the Local Authority will make one or more payments to reimburse the Owner. Actual losses include loss of productive land and reductions in income from leases.

SECTION 03: FACT SHEETS

FACT SHEET 06: MODEL PATH AGREEMENT

(CONTINUED)

8. Management of the Property

The Owner shall be free to manage the property provided that public access is not impeded or deterred and that the public is not put at danger or prevented from using any facilities along it.

The Owner shall be able, with the prior agreement of the Local Authority (which shall not be unreasonably withheld), to divert access from the route for a limited period to enable necessary land management works, in keeping with the Scottish Outdoor Access Code.

The Owner shall make good any damage to the route caused by land management operations or by the Owner's fault or negligence.

9. Liability

The Local Authority shall be responsible for meeting all actions, claims, costs and expenses, which may be made against the Owner by reason of the construction, improvement, use or management of the path.

The Owner, or his agents or any interested party listed in paragraph 10, shall remain liable for any damage, injury or death, which may be caused directly, or indirectly through their respective fault or negligence.

10. Other Interested Parties

The Owner agrees to notify and obtain the relevant compliance from those parties as listed below who have an interest in the land over which the path passes to the terms of this agreement:

- Land Owner (where 'the Owner' in this Agreement is an occupier – crofter, tenant etc)
- Farm Tenant
- Sporting Tenant
- Secured Creditors
- Others (specify)

11. Duration of Agreement

This Agreement shall commence on [date] and shall continue until [date] (normally a period of between 15 and 25 years), unless terminated for any of the reasons in paragraph 13 below.

12. Review

The Local Authority will review with the Owner at least every two years the operation of the Agreement, when the terms of the Agreement, with the exception of paragraph 13 below, may be adjusted by mutual consent. The Agreement shall also be reviewed when the Local Authority is preparing its Core Paths Plan under section 17 of the Act, in order that the potential for this path to be listed as a Core Path may be considered at that time and the Agreement adjusted accordingly.

13. Termination

The Agreement may not be terminated before the date stated in paragraph 11 above except, given a written notice of at least [six months] by one party to the other, for the following reasons:

- a) By agreement between the parties for clear and justifiable reasons, and only if an alternative route is not practical; or
- b) Failure by either party to comply with the terms of the Agreement, following Notice to Remedy issued by the other party.

14. Professional Costs

The Local Authority shall meet all usual reasonable professional expenses, fees and outlays incurred by the Owner as shall be agreed relating directly to the negotiation and conclusion of this Agreement.

15. Transfer of Ownership or Responsibilities

If at any time after this Agreement has been signed the Owner proposes to dispose of, assign or otherwise grant any interest in the land, the Owner must disclose the fact that this Agreement exists and require the person(s) acquiring such interest to be bound by the terms of the Agreement.

The Local Authority, with the Owners consent (which will not be unreasonably withheld), may transfer its responsibilities for creating, improving or managing the path to another agent.

16. Arbitration

In the event of an unresolved dispute over the interpretation of this Agreement, an Arbiter shall be appointed on the application of either party to the Chairman of the Scottish Branch of the Royal Institute of Chartered Surveyors. The Arbiter shall decide the apportionment of the costs of arbitration. The Arbiter's decision shall be final and binding on both parties.

Signed _____

Signed _____

Annex One – Map of the Path (signed by both parties).

Annex Two – Inventory and details of installations and structures subject to this Agreement.

Annex Three – Schedule of inspection, management and maintenance programme to be undertaken by the Local Authority, or its approved agent (including works for which prior notice to the Owner will not be required).

SECTION 03: FACT SHEETS

FACT SHEET 07: THE DISABILITY DISCRIMINATION ACT (DDA) 1995

The DDA, passed in 1995 and implemented in stages, makes it illegal to discriminate against disabled people on grounds of their disability. Part III of the DDA provides rights in employment, buying or renting land or property, and access to **goods, facilities** and **services**. Rights apply to adults and children who have a physical or mental impairment that affects his or her ability to carry out normal day-to-day activities.

The DDA makes it unlawful for a service provider to discriminate against a disabled person by:

- Refusing to provide (or deliberately not providing) any service which it provides to members of the public; or
- Providing service of a lower standard or in a worse manner; or
- Providing service on worse terms, whether or not there is a charge for the service.

Therefore, under the DDA, discrimination occurs where:

- A disabled person is treated less favourably, for a reason relating to the persons disability, than someone else, and where that treatment cannot be justified.
- A service provider fails to comply with the duty to make reasonable adjustments in relation to the disabled person and cannot show that the failure is justified.

Since 1st October 1999, where disabled people find it impossible or unreasonably difficult to use services, service providers (including path providers), have had a legal duty to take **reasonable** steps to allow disabled people to use their services. This could entail:

- Changing practices, policies and procedures.
- Removing physical barriers or providing a reasonable alternative way of making services available.
- Providing supplementary aid or services if it would enable, or make it easier for, disabled people to use services.

From 1st October 2004, where a physical feature makes it impossible or unreasonably difficult for disabled people to access services, service providers will have a duty to:

- Remove or alter the physical feature, or
- Provide reasonable means of avoiding it.

The duty places an obligation for service providers to plan ahead for improvements to the service, review improvements over time, and keep up to date with new developments in service delivery.

Central to the legislation is the question of what is reasonable for disabled people to expect and reasonable for service providers to provide. "Reasonableness" is not defined in the legislation, and definition will only be achieved through case law brought against service providers in the future. However, some of the factors that might be considered in determining reasonable adjustments include:

- Whether taking any particular steps would be effective.
- The extent of the service provider's financial and other resources.
- The extent of any disruption.

It is not possible, desirable or reasonable for all paths to be made fully accessible. However, it is unlikely to be reasonable for a path network, provided as part of a tourism or recreation based business, to offer no outdoor access opportunities for disabled people. Networks should be planned to offer disabled people the same range of opportunities and experiences as everyone else. It should also be recognised that a path that is wheelchair accessible is also accessible for parents with pushchairs, toddlers, the elderly and the infirm.

Determining whether or not a land manager is a service provider is therefore crucial to decisions relating to the necessity and/or requirement for "reasonable adjustments" to be made. In some situations this will be clear. As described above, service provision is clearly a fundamental element of land based tourism and/or recreation businesses. Owners and managers of such businesses would therefore be required to comply with the terms of the DDA.

Less clear is the position of farmers and land managers where access is taken on their land, but where tourism/recreation service provision is not a part of their business. The following hypothetical scenarios may help to provide some clarity on when service provision would be deemed to be occurring, and thus when the requirement for reasonable adjustments to services and facilities would be regarded as applicable.

Scenario 1:

"A farmer has a small farm on the edge of town. There is a path on the farmer's land that is used frequently by walkers and people walking their dogs. Although the farmer does not maintain the path or promote its use, access has been taken along this path by local residents quite amicably for many years."

Questions

- Would this farmer be regarded as a service provider?
- If so, would the farmer be expected to make adjustments to this path to make it more accessible to people with a disability?

Answer

The farmer has never set out to provide a service to the public in relation to facilities for walkers. Consequently, this farmer is unlikely to be regarded as a service provider and would therefore not be subject to the requirements of the DDA.

However, there is a slight grey area because section 19.3 of the DDA does state that ...

"services include access to and use of any place where members of the public are permitted to enter."

But, the access legislation will confer a right of (responsible) non-motorised access to most land and inland water in Scotland. In this context, it is unlikely that every landowner and manager would be regarded as a service provider.

Scenario 2:

"For reasons of public safety, a farmer wishes to manage access taken through his farmyard by providing an alternative signposted route around the farmyard."

Questions

- By actively promoting and signposting this alternative route, would the farmer be regarded as a service provider?
- If so, would the farmer be required to provide a path that was accessible to people with a disability?
- If so, how would the level of "reasonable adjustment" be determined in this case?
- What funding (if any) would be available to assist with the cost of any adjustment?

Answer

Whilst there has been no legitimate determination as yet, it may be that routes that become part of a Core Path Network will be regarded as a public facility, with the local authority taking on the title of service provider. It is not yet clear whether other managed or promoted routes would be similarly classed. This may only be clarified in time by case law.

If the farmer were to be regarded as a service provider in this instance, the requirements of the DDA would apply. This would mean that any alternative route provided should accommodate as broad a range of users as were able to access the previous path through the farmyard.

The level of "reasonable adjustment" undertaken would depend on what would be reasonable in the circumstances. Factors considered may include, topography; terrain; availability of suitable materials; extent of the service provider's financial and other resources; availability of financial and other assistance; and the degree to which adjustments would change the fundamental nature of the service in question, or the nature of the trade, profession or business.

SECTION 03: FACT SHEETS

FACT SHEET 07: THE DISABILITY DISCRIMINATION ACT (DDA) 1995 (CONTINUED)

For land managers, as service providers, who are considering their obligations under the DDA, it may be useful to contact the local authority Access Officer to discuss the options available, including a contribution towards cost.

The above is intended as a general guide to the requirements of Part III of the DDA, and what this may mean for land managers. It must be remembered that there is as yet no case law in relation to this legislation, and therefore there is no direction on how the DDA will be interpreted in a court of law. As discussed previously, clarity and definition may only come through future case law.

Further Information

Disability Rights Commission 2002, DDA Code of Practice, Rights of Access: Goods, Facilities, Services & Premises, DRC, Stratford-upon-Avon
http://www.drc-gb.org/uploaded_files/documents/2008_223_drc%20cop%20rights%20of%20Access.doc

Fieldfare Trust, 2003, BT Countryside For All Standards & Guidelines: A Good Practice Guide to Countryside Access for Disabled People (now available as a CD Rom only), Fieldfare Trust, 7 Volunteer House, 69 Crossgate, Cupar, Fife, KY15 5AS, Tel 01334 657708, e-mail infor@fieldfare.org.uk

HMSO, 1995, Disability Discrimination Act, TSO, Norwich,
http://www.legislation.hms.gov.uk/acts/acts1995/UKpga_19950050_en_1.htm

PFAP, 2003, Factsheet 3.6: Disability Discrimination Act, PFAP, Alloa, <http://www.pathsforall.org.uk/3.6-Disability%20Discrimination%20Act.pdf>

SNH, 2002, Information & Advisory Note Number 156: An Updated Note on the Implications of the Disability Discrimination Act 1995 for Countryside Service Providers, SNH, Battleby

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SECTION 03: FACT SHEETS

FACT SHEET 08: SIGNAGE

Signposts, waymarkers, interpretation and information boards and notices can be valuable tools in land and access management. Signage can encourage the public to use the routes preferred by the land manager, and guide people away from sensitive areas or areas where their presence might conflict with other land uses. Active, positive signs and language are more effective than negative, passive signs. Positive and welcoming signage will therefore help people to behave responsibly in the countryside.

Responses to the Scottish Outdoor Access Code consultation indicated that there was a high demand for common signage. This would provide continuity of access management throughout the country, and help to deliver consistent and readily recognisable guidance to the visiting public. Consequently, Scottish Natural Heritage is investigating how common signage can be developed. Until such guidance becomes available, the following information may help the land manager to consider what is required of signage.

Signposts

Signposts advertise the existence of a path and provide information on the use of the path. Information on the signpost should include the name of the route, where it goes and the length of the route. If possible, also include information on the types of use the path is suitable for e.g. walking, cycling, horse riding. Symbols can often be used to deliver this kind of information.

Waymarkers

Waymarkers (usually in the form of a simple arrow on a post) provide direction where the path is unclear or confirmation that people are still on the correct route. Colour coded waymarkers can also be used in conjunction with a leaflet so that a particular route can be followed.

Interpretation Boards

Interpretation boards are a means of communicating with the people who visit your land. Effective interpretation will increase the visitor's awareness and understanding of the environment and encourage a sense of connectedness, care and respect for the environment and the land management activities undertaken there. For example, information and explanation can be provided on the importance of deer stalking to the maintenance of habitat and species diversity, and to fragile rural economies. Visitors who have a better understanding of the countryside are more likely to exercise the right of access responsibly and to follow any advice offered by the land manager.

Interpretation boards are best positioned at key access points and/or visitor hubs, e.g. car parks, toilets, visitor centres.

Effective interpretation is: Relevant; Short; Clear; Simple; Interesting.

Information Boards & Notices

Information boards and notices will help visitors to avoid interrupting other land management activities. For example, a dated notice giving on-the-day information about where shooting is taking place and suggesting an alternative route will reduce the possibility of a shoot being disturbed.

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Further information

Booklets/Manuals

All of the following are available from The Paths For All Partnership:

- Signpost Guidance: Planning, Location, Design, Installation & Maintenance, 2000
- Creating a Path Network – a guide to local action, 1997
- Promoting Paths for People: A Marketing Guide and Toolkit, 2003, (in association with Scottish Natural Heritage)

Factsheets

All of the following are available from The Paths For All Partnership:

- 6.1 Introducing Interpretation
- 6.2 Interpretive Planning
- 6.3 Writing Effective Interpretation
- 6.4 Producing Interpretive Panels
- 6.5 Making Interpretation Accessible to All
- 6.6 Evaluating Interpretation
- 6.7 Good Practice Guidelines
- 6.8 Monitoring Path Use Using Automatic Counters

Paths for all Partnership, Inglewood House, Tullibody Road, Alloa, FK10 2HU

Tel: 01259 218888 F: 01259 218488

e: info@pathsforall.org.uk

Paths For All Partnership publications are also available online at:

<http://www.pathsforall.org.uk/publications.html>

Signage Suppliers

The supplier details offered below do not represent an exhaustive list. Provision of these details should not be taken as endorsement of standard of work or recommendation.

Alistair Lawson
(Field Officer with responsibility
for signposting)
Scotways
24 Annandale Street
Edinburgh EH7 4AN
Tel/Fax: 01259 781301
E-mail: infor@scotways.com

Signs of Scotland
Rose Cottage
Burnton
By Kippen
Stirling FK8 3JL
Tel/Fax: 01786 870674
Mob: 07774 266540
E-mail: johncoyle@tiscali.co.uk

Shelley Signs
Eaton on Tern
Market Drayton
Shropshire TF9 2BX
Tel: 01952 541483
Fax: 01952 541755
E-mail: sales@shelleysigns.co.uk
www.shelleysigns.co.uk

Forest Enterprise
Fochabers Sign Workshop
Brian Geddes
Tel: 01343 821500
E-mail: brian.geddes@forestry.gsi.gov.uk

Metrosigns 2000
Manton Industrial Estate
Bedford MK41 7PB
Tel: 01234 351207
Fax: 01234 352234
E-mail: sales@metrosigns.co.uk
www.metrosigns2000.co.uk

Raymac Signs
Prospect Works
Showfield Lane
Malton, North Yorkshire
YO17 6BT
Tel: 01653 600015
Fax: 01653 691600
E-mail: sales@raymac.co.uk
www.raymac.co.uk

Glensign Advisory Service
15 Glenogle Crescent
Perth PH2 0AH
Tel: 01738 631968
Mob: 07802461364
E-mail: colinglen@onetel.net.uk

George Bruce
7 Viewforth
Port Seton
East Lothian EH32 0DR
Tel: 01875 811281

SECTION 03: FACT SHEETS

FACT SHEET 09: MAIN SOURCES OF FUNDING FOR ACCESS

Scottish Natural Heritage

SNH grants are discretionary. Rates vary, but rarely exceed 50% of costs. Application must be made in advance – grants are not awarded retrospectively.

Projects or elements of projects eligible for funding through agriculture, forestry or agri-environment programmes are not eligible for SNH grants.

SNH will not top up European or state aid.

Eligible projects may include:

- Access Provision.
- Creation, improvement or management of footpaths, bridleways and cycleways.
- Signposting and waymarking.
- Recreation Facilities.
- Visitor reception facilities.
- Educational and interpretation facilities.
- Viewpoints and car parks.
- Low cost accommodation – where these relate to the natural heritage.
- Ranger services.
- Preparation and implementation of whole farm or estate management plans for conservation and recreation, and of plans relating to specific natural heritage features or interests.

Management Agreements may be a further mechanism through which long-term financial support can be attained. Management agreements, aimed at promoting conservation, enjoyment or understanding of the natural heritage, would provide a more structured approach to improvement programmes, and would be tailored to meet the needs of the site.

How to apply:

Applications must be submitted on an SNH grant application form. Application forms are available from, and can be submitted to, any SNH office.

Further information is available online at www.snh.org.uk/ww0/ww0-land-grants.htm or from any SNH office.

SNH AREA OFFICES

Forth & Borders	Argyll & Stirling	Strathclyde & Ayrshire	Dumfries & Galloway
Laundry House Dalkeith Country Park Dalkeith Midlothian EH22 2NA T: 0131 654 2466 F: 0131 654 2477	The Beta Centre Innovation Park University of Stirling Stirling FK9 4NF T: 01786 450362 F: 01786 451974	Caspian House Mariner Court Clydebank Business Park Clydebank G81 2NR T: 0141 951 4488 F: 0141 951 4510	Carmont House The Crichton Bankend Road Dumfries DG1 4ZF T: 01387 247010 F: 01387 259247
46 Crossgate Cupar Fife KY 15 5HS T: 01334 654038 F: 01334 656924	1 Kilmory Industrial Estate Kilmory, Lochgilphead Argyll PA31 8RR T: 01546 603611 F: 01546 602298	19 Wellington Square Ayr KA7 1EZ T: 01292 261392 F: 01292 269493	Holmpark Industrial Estate New Galloway Road Newton Stewart DG8 6BF T: 01671 401075 F: 01671 401078
Anderson's Chambers Market Street Galashiels TD1 3AF T: 01896 756652 F: 01896 750427	Glencruitten Road Oban Argyll PA34 4DN T: 01631 567228 F: 01631 567229	30 Hope Street Lanark ML11 7NE T: 01555 665928 F: 01555 661966	Cairnmore of Fleet NNR Reserve Office, Dromore Farm, Gatehouse of Fleet Castle Douglas Kircudbrightshire DG7 2BP T: 01557 814435 F: 01557 815044

SNH AREA OFFICES

Forth & Borders	Argyll & Stirling	Strathclyde & Ayrshire	Dumfries & Galloway
	Main Street Bowmore, Isle of Islay Argyll PA43 7JJ T: 01496 810711 F: 01496 810665		Caerlaverock NNR Reserve Office, Hollands Farm Road Caerlaverock Dumfries DG1 4RS T: 01387 770275
	17 John Street Dunoon, Argyll PA23 8BN T: 01369 705377 F: 01369 705788		

SNH AREA OFFICES

North Highland	East Highland	West Highland	Grampian	Tayside & Clackmannanshire
Main Street Golspie Sutherland KW10 6TG T: 01408 633602 F: 01408 633071	Fodderty Way Dingwall Business Park Dingwall IV15 9XB T: 01349 865333 F: 01349 865609	The Governor's House The Parade Fort William Inverness-shire PH33 6BA T: 01397 704716 F: 01397 700303	16/17 Rubislaw Terrace Aberdeen AB1 1XE T: 01224 642863 F: 01224 635020	Battleby Redgorton Perth PH1 3EW T: 01738 444177 F: 01738 442060
17 Pulteney Street Ullapool Ross-shire IV26 2UP T: 01854 613418 F: 01854 613419	Achantoul Avermore Inverness-shire PH22 1QD T: 01479 810477 F: 01479 811363	Bridge Street Portree Isle of Skye IV51 9ER T: 01476 613329 F: 01476 613470	32 Reidhaven Street Elgin Morayshire IV30 1QH T: 01343 541551 F: 01343 546406	West Lodge Airlie By Kirriemuir Angus DD5 5NP T: 01575 530333 F: 01575 530220
	Creag Meagaidh NNR Aberarder Kinlochlaggan By Newtonmore Inverness-shire PH20 1BX T/F: 01528 544265	Anancaun Kinlochewe By Achnasheen Ross-shire IV22 2PA T: 01445 760254 F: 01445 760301	St Cyrus NNR The Old Lifeboat Station Nether Warburton St Cyrus Montrose DD10 0DG T/F: 01674 830736	The Pier Loch Leven Kinross KY13 7UX T: 01577 864439 F: 01577 865166
		The Reserve Office The White House Isle of Rum PH43 4RR T: 01687 462026 F: 01687 462805	Muir of Dinnet NNR New Kinord House Dinnet Aboyne AB34 5LQ T/F: 01339 881022	
			Forvie NNR Stevenson Forvie Centre Little Collieston Croft Collieston Ellon AB41 8RU T/F: 01358 751330	

SECTION 03: FACT SHEETS

FACT SHEET 09: MAIN SOURCES OF FUNDING FOR ACCESS (CONTINUED)

Partnership

Working in partnership with community groups may offer opportunities for funding from a number of sources not otherwise available to individual landowners. For example, funding for access may be available via the European Union (European Regional Development Scheme, European Social Fund), the Scottish Executive (Scottish Rural Partnership Fund, Community Action Grants), the National Lottery distributors (Community Fund, Heritage Lottery Fund, New Opportunities Fund) local authorities, and the Landfill Tax Credit scheme.

To be eligible for funding, community groups are usually required to be formally constituted, and to be either registered with the Charity Commission or, in Scotland, recognised by the Inland Revenue as applying their profits for charitable purposes.

Information on community groups should be available from the respective local authorities.

Scottish Forestry Grants Scheme

The SFGS aims to encourage the creation and management of woods and forests to provide economic, environmental and social benefits now and in the future.

Within the scheme stewardship grants are available for woodland recreation and developing community involvement.

Woodland Recreation

Grants are available for the purpose of improving the social value of woods and forests by developing facilities for informal recreation.

Recreation proposals should fit locally agreed proposals and there should be dialogue with and support from appropriate bodies such as local authorities, SNH, local access forums etc.

90% of **standard** costs may be awarded for designated areas. Otherwise grants will be based on 60% of standard costs.

Examples of eligible operations are:

- Preparation of a recreation management plan.
- Provision/upgrading of appropriate routes, stiles, gates, small-scale car parking etc.
- Provision of appropriate signage, interpretation and information.

Developing Community Involvement

Grants are available for the purpose of improving the social value of woods and forests through community initiatives that help more people to become involved in managing woodlands for local benefit.

Grants will be based on **agreed** costs, with awards of 90% in designated areas and 60% in other areas – up to a maximum of £5,000 per year for up to 5 years for training.

Eligibility Criteria Includes:

- The community actively managing an existing woodland or planting a new one.
- The award of one payment per wood.
- A minimum wood size of 1.0 hectare.
- Community ownership, tenancy, crofting township – or a legal partnership agreement in respect of the woodland, or demonstration by the landowner and community that there is a firm intention of advancing the project.

How to apply

Application proposals must be set out in a 5 year plan of operations in the application form. Application forms, and guidance notes on completing application forms, are available from local conservancy offices.

Further information is available online at www.forestry.gov.uk/forestry/hcou-4u4j37 or from any local Forestry Commission Conservancy office.

CONSERVANCY OFFICES		
Highland Conservancy	Grampian Conservancy	Strathclyde Conservancy
"Woodlands", Fodderty Way Dingwall IV 15 9XB T: 01349 862144 F: 01349 866624 E: bob.dunsmore@forestry.gsi.gov.uk	Ordiquhill, Portsoy road Huntly AB54 4SJ T: 01466 794542 F: 01466 794986 E: grampian.cons@forestry.gsi.gov.uk	1 North Avenue Clydebank Business Park Clydebank G81 2DR T: 0141 941 2611 F: 0141 941 2125 E: strathclyde.cons@forestry.gsi.gov.uk
Highland Conservancy	Grampian Conservancy	Strathclyde Conservancy
14 Gowans Terrace Perth PH1 5AN T: 01738 442830 F: 01738 441787 E: perth.cons@forestry.gsi.gov.uk	11 Church Street Dumfries DG1 1DF T: 01387 256111 F: 01387 257888 E: sws.cons@forestry.gsi.gov.uk	North Wheatlands Mill Wheatlands Road Galashiels TD1 2HQ T: 01896 750222 F: 01896 751286 E: l&b.cons@forestry.gsi.gov.uk

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SECTION 03: FACT SHEETS

FACT SHEET 10: BIOSECURITY

The occurrence and/or spread of disease among farm animals is an ever present and on-going concern for many land managers. Consequently, biosecurity measures are often built into livestock management as a matter of course.

The incoming right of access to most land and inland water in Scotland has given rise to questions about the possible impact on the integrity of biosecurity measures and potential associated risks of an increased incidence of disease in farm animals. Until the actual impact of access on disease incidence becomes known, land managers must make decisions about biosecurity within the context of existing accreditation scheme requirements and advice from the Scottish Executive. The following information is intended to assist land managers with such considerations.

Accreditation Requirements

Farm Assured Schemes

Farm Assured Schemes seek to ensure that high standards are applied to every aspect of production, including biosecurity. Producers must comply with these standards if they are to attain the Farm Assured marque for the commodities they produce.

With specific reference to public access to farmland, and the walking of dogs over farmland, there are no external requirements imposed upon producers. However, the standards for certification for pigs, and cattle and sheep, refer members to the Scottish Executive document "Codes of Recommendations for the Welfare of Livestock: Animal Health & Biosecurity" for advice on adoption of biosecurity measures in relation to visitors to farms.

Note:

The Dog Fouling (Scotland) Act 2003

The Dog Fouling (Scotland) Act 2003 came into force on 22nd October 2003.

The two main aims of the Act are to:

- *Amend the offence of dog fouling so that the offence consists of failing to clear up after a dog rather than of allowing a dog to foul.*
- *Establish new enforcement provisions in connection with the offence by enabling local authorities and police constables to issue fixed penalty notices to persons suspected of committing the offence.*

The Act applies to any public open place, which is defined as "any place which is open to the air to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and any common passage close, court, stair, back green, garden, yard or other similar common area."

It should be noted, however, that the Act does not apply to agricultural land.

The Dog Fouling (Scotland) Act 2003 is available from The Stationery Office Bookshop (see below), or can be viewed online at: www.hms.gov.uk/legislation/scotland/acts2003/20030012.htm

Scottish Executive Guidance

Codes of Recommendations for the Welfare of Livestock: Animal Health & Biosecurity

Part 3 of the Code offers advice for recreational users of farmland. This advice is reproduced below.

1. Walkers, cyclists and horse-riders are encouraged to follow the advice below, to help reduce the risk of future disease outbreaks. This advice is interim prior to the planned introduction of the Scottish Outdoor Access Code, expected to come into effect in late 2003 (it is now expected that the Code will come into effect in early 2005). In the event of a disease outbreak more detailed advice on taking and managing access responsibly will be disseminated to all relevant parties.

Note:

Sections 3.32 – 3.34 of the Scottish Outdoor Access Code provides guidance to users on how they can help to maintain animal health and biosecurity. This guidance essentially repeats the advice given in the Codes of Recommendations for the Welfare of Livestock: Animal Health & Biosecurity, which is transcribed below.

2. Recreational users should follow these precautions:

- Never feed animals or leave food around where animals can eat it;
- Take all litter with you;
- Respect any official signposting in the event of a disease outbreak;
- Ensure gates are left as they are found;
- Avoid contact with farm animals;
- Keep dogs under control; and
- Use disinfectant footpads or baths where provided, particularly in the event of a disease outbreak.

3. Particular risks, such as from *E. coli* 0157, can arise when people picnic or camp in fields that are being, or have recently been used for grazing. Try to avoid picnicking or camping in these areas. Make sure that you wash your hands after leaving the area and before touching food.

Note:

*Scottish Executive advice to recreational users of animal pasture on reducing the risk of infection by *E. coli* 0157 is available from The Stationery Office Bookshop (see below), or can be viewed online at <http://www.scotland.gov.uk/library5/health/ecsip-05.asp>*

SECTION 03: FACT SHEETS

FACT SHEET 10: BIOSECURITY (CONTINUED)

Further Information

Further information on Farm Assured Schemes is available from:
Quality Meat Scotland, Rural Centre, West Mains, Ingliston, Newbridge, EH28 8NZ
T: 0131 472 4040
F: 0131 472 4038
E: info@qmScotland.co.uk
www.qmScotland.co.uk/members/schemes/assurance.html

Assured Food Standards, PO Box 30773, London, WC2H 8AW
T: 020 7331 7660
F: 020 7331 7626
E: admin@assuredfoodstandards.com
www.littleredtractor.org.uk/links.asp

Copies of the Codes of Recommendations for the Welfare of Livestock: Animal health & Biosecurity are available from: The Stationery Office Bookshop, 71 Lothian Road, Edinburgh, EH3 9AZ, Tel: 0870 606 5566

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SECTION 03: FACT SHEETS

FACT SHEET 11: COUNTRYSIDE STRUCTURES

Gates, fences, stiles, barriers, seats and boardwalks all have a role to play in access management. Functions of countryside structures include livestock control, fence protection, conservation management, control of vehicular access and public amenity.

For the land manager, there are a number of considerations to be taken into account when choosing appropriate countryside structures. Among these considerations are the operational requirements of the various land uses on the estate/farm, integrating access with other land use activities, the frequency and type of access taken and the fulfilment of obligations under the access legislation and the Disability Discrimination Act (DDA) 1995 (see separate appendix on the DDA). The access legislation will provide a right of access to most land and inland waters for people on foot, horseback and bicycle. Within the terms of the DDA, service providers, including path and access providers, must take into account the needs of people with disabilities

The following notes consider the suitability of countryside structures within this legislative context. These notes are offered as general guidance only. More detailed information, including specific designs, recommended specifications and standards, is available on request from the SRPBA Access Officer, or by referring to:

"The Countryside Access Design Guide: Natural Heritage Management", SNH, 2002.

Grant aid may be available to assist with the provision of access infrastructure. Please refer to fact sheet 9 for further information on sources of funding. In some circumstances the local authority may also be able to provide countryside structures. This should be discussed with the local authority Access Officer.

Barriers and Gaps

Barriers, such as gates, poles, chicanes and stiles, are often needed to control livestock or restrict vehicular access. In restricting access to unwanted users (e.g. motorcyclists), constraints may also be unintentionally placed on legitimate users, such as horse riders, people with buggies and people with a disability. In choosing an appropriate barrier, decisions should be based on land management needs, the frequency and type of access taken and the profiles of those using the path, i.e. walkers/horse riders/cyclists, assisted/unassisted ambulation, level of user's ability and skill. If practicable, provide for a path to cross a boundary (e.g. a fence, wall or hedge) through a gap.

Gates

When installing gates, the right of access for walkers, horse riders and cyclists, the needs of people with disabilities and obligations under the DDA should be considered. Kissing gates can be more restrictive to users than pedestrian or bridle gates. They should only be installed, therefore, if there is a good reason to do so and more accessible designs are unacceptable (perhaps to control use by motorcyclists).

Gates should swing freely and easily and should be installed so that they operate in the intended manner. Self-closing hinges will improve ease of use and ensure stock control.

Stiles

Stiles erected in inappropriate locations may severely restrict people's ability to gain access to the countryside. Stiles are impassable to wheelchair and pushchair users and can be an insurmountable barrier to ambulant disabled, elderly and less agile people. Many people enjoy walking their dogs in the countryside, and a stile can be as much a barrier to dogs as to people.

Wherever possible, land managers should consider installing a gate in preference to a stile. New stiles should only be installed in exceptional circumstances where there is no alternative or where no other type of structure is acceptable. Consider the use of a dog gate/flap alongside the stile.

Steps and Ramps

Steps should be designed to provide convenient, easy and safe access for able-bodied people and, where appropriate and practical, disabled people. Ramps provide access for a wide range of users, including cyclists, people with prams and wheelchair users. However, access opportunities can often be optimised by the installation of both steps and ramps. Land managers will need to consider the specific circumstances of each site when making decisions about the most appropriate type and level of provision.

Fences

Barbed wire should preferably not be used on fences adjacent to areas of high public use. If its use is required where cattle or horses are present, if practicable, it should be fixed to the side of the fence away from the public. Where livestock control is not required, the use of fencing should preferably be avoided.

If public access needs to be managed, for example to ensure public safety, then fencing should form an effective and permanent barrier to both adults and children, and possibly also to dogs. Fencing can also be used to provide a visual boundary to guide the public. The intended function of the fencing will determine the choice of design and standard.

Boardwalks

Boardwalks can be a valuable management tool in balancing the needs and interests of visitors with the protection of important wildlife habitats. Boardwalks can, however, be relatively obtrusive in the landscape and expensive to construct and maintain and should therefore be used selectively and only where necessary, with lengths of run being kept to a minimum.

Seats and Picnic Tables

Seats and picnic tables may be useful structures for those land managers who offer a high level of recreational facilities as part of a wider land based business.

Seats offer an opportunity for visitors to rest, relax and enjoy the view. They can provide useful resting places for elderly and disabled people and those with mobility difficulties. This may be especially important in the countryside where path surfaces may be uneven and where there may be ramps or steps. Seats are most useful at the tops and bottoms of slopes and at intervals along more difficult sections of a path.

Picnic tables should be designed so that they are readily accessible to both able bodied and disabled people. Tables that are accessible to people in wheelchairs can be provided at suitable locations.

Information sheets on the different designs of seats and picnic tables are available on request from the SRPBA Access Officer.

SECTION 03: FACT SHEETS

FACT SHEET 11: COUNTRYSIDE STRUCTURES (CONTINUED)

Further Information

Guidance on physical accessibility standards that will improve access to the countryside for people with disabilities is available from:

Fieldfare Trust, 2003, BT Countryside For All Standards & Guidelines: A Good Practice Guide to Countryside Access for Disabled People (now available as a CD Rom only), Fieldfare Trust, 7 Volunteer House, 69 Crossgate, Cupar, Fife, KY15 5AS, Tel 01334 657708, e-mail infor@fieldfare.org.uk

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SECTION 03: FACT SHEETS

FACT SHEET 12: HILLPHONES

The Hillphones service provides daily information, by recorded telephone messages, for users about deer stalking activities in a number of areas of highland Scotland. Originally established by the Access Forum to promote the principles of the Condordat on Access to Scotland's Hills and Mountains, the Hillphones service will also help users to exercise access rights responsibly and land managers to manage land responsibly for access. Since the pilot scheme of 1996, the service continues to expand with increasing numbers of estates joining the scheme each year. The scheme is run jointly by the Mountaineering Council of Scotland (MCofS) and SNH. The SRPBA and representatives of participant estates attend regular review meetings to inform and advise on how the scheme should progress. The Hillphones scheme is an extension to the information service provided by the MCofS/SRPBA/ADMG guide Heading for the Scottish Hills (see fact sheet 13).

The Hillphones System

Participant estates are divided into Hillphone areas. Each Hillphone area has a nominated message co-ordinator who has been provided with the necessary telephone equipment by SNH. The message co-ordinator is responsible for collating information daily from stalkers, compiling this into a message and recording it on the answerphone by 8.00am each day. Message guidelines and technical support are provided.

Messages indicate where stalking is taking place and which routes would be unlikely to affect stalking, as well as giving a forecast of stalking activity over the next few days.

In general, participant estates have found the service beneficial in terms of increasing user awareness of estate activities and reduced disturbance to stalks. Other than co-ordinator time, there is no cost to the landowner.

Further Information

Further information on the Hillphones service can be obtained online at <http://www.hillphones.info/>

Or from:

Recreation & Access Group

Scottish Natural Heritage

2 Anderson Place

Edinburgh EH6 5NP

T: 0131 446 2088

F: 0131 42405

E: recreationandaccess@snh.gov.uk

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SECTION 03: FACT SHEETS

FACT SHEET 13: HEADING FOR THE SCOTTISH HILLS

The aim of the Heading For The Scottish Hills (HFTSH) book is to provide contact details so that users can obtain information about estate activities and plan their outings accordingly. Estate boundaries are illustrated on a series of maps, with reference numbers linking map-based information to estate contact details.

First published in 1988 by the Scottish Mountaineering Trust, HFTSH has since had three further reprints so that up-to-date information on estate contact details can be provided. The latest publication, in 1996, was the result of collaborative work between the Mountaineering Council of Scotland and the Scottish Landowners' Federation.

Revision of the 1996 edition is currently underway, and the resulting updated information will be made available online and not in book format.

Further Information

If you would like to submit estate contact details to the Heading for the Scottish Hills website (under development), or would like further information, please contact:

Dougal Roy
24 Hazel Drive
Dundee
DD2 1QQ
Tel: 01382 566421

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SECTION 03: FACT SHEETS

FACT SHEET 14: BRITISH ASSOCIATION FOR SHOOTING & CONSERVATION CODES OF PRACTICE

The British Association for Shooting and Conservation (BASC) Codes of Practice set the standards for shooting. BASC provide Codes of Practice (free of charge) for:

Air rifles.	Wildfowling.	Picking-up.
Shotgun.	Flight ponds	Trapping pest mammals.
Fox snaring.	Deer Stalking.	Woodpigeon shooting.
Lamping.	Good shooting practice.	
Trapping pest birds.	Gundogs.	

The Code of Good Shooting Practice

The Code requires that shoot managers, Guns, gamekeepers and their employees deliver sustainable shooting, paying attention to management of habitat and avoiding nuisance to others. Within the Code comprehensive advice is provided for all aspects of shooting. In relation to horses and walkers (under the heading of "Consideration For Others"), the Code requires that:

- Shoot managers and Guns must have special regard to the safety of walkers, riders and their horses.
- Where possible shoot organisers should liaise with local users, informing them when shoots are taking place.
- Where appropriate, shooting or beating should pause to allow horses or other rights of way users to pass.
- All Guns should be made aware of bridleways and other rights of way as well as any fields in which horses are kept. Drives should be organised with this in mind.

The Code of Good Shooting Practice is overseen by a Steering Committee comprising representatives of the following organisations:

- British Association for Shooting and Conservation.
- Countryside Alliance, Campaign for Shooting.
- Country Land and Business Association.
- Devon and Cornwall Association of Sporting Shoots
- Game Farmers' Association
- National Game Dealers' Association
- National Gamekeepers' Organisation.
- Scottish Gamekeepers' Association.
- The Game Conservancy Trust.
- Scottish Rural Property & Business Association.

Further information

Further information on BASC Codes of Practice can be obtained from:
BASC Scottish Centre, Trochry, Dunkeld, Tayside, PH8 0DY
Tel: 01350 723226; Fax: 01350 723227; E-mail: Scotland@basc.org.uk, www.basc.org.uk

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SECTION 03: FACT SHEETS

FACT SHEET 15: PROTECTION OF NATURE CONSERVATION INTERESTS

With well-managed access and a comprehensive and long-term access education programme, it is anticipated that the right of access will not adversely affect the natural heritage to any significant extent. However, there may be some circumstances in which land managers will wish to afford additional protection to particularly vulnerable areas. For example, an area awarded a high conservation designation status (such as a Ramsar or Natura site or a Site of Special Scientific Interest) that had previously been subject to the effects of irresponsible behaviour (such as fire damage or removal of protected flora and/or fauna) may benefit from particular protection measures. Potential mechanisms for protection of the natural heritage can be found within Part 1 of the Land Reform (Scotland) Act 2003 and the Wildlife & Countryside Act 1981.

The Land Reform (Scotland) Act 2003

Part 1 of the Land Reform (Scotland) Act 2003 may offer a number of options for protection of the natural heritage. Below are extracts from the relevant sections of the Act that may provide a basis for mechanisms that would expedite the protection of nature conservation interests. It would be advisable, however, to consider individual circumstances and to seek a more detailed legal opinion before pursuing any of these options.

Section 29 Powers to protect natural and cultural heritage

(1) Scottish Natural heritage may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable.

(3) Any notice put up under subsection (1) above may warn persons of any adverse effect that their presence on the land or any activities they might conduct there might have on the natural or, as the case may be, cultural heritage sought to be protected.

Notices may request that people exercise access rights in a particular way, or avoid a specific area or route in order to protect the natural heritage. Failure to comply with such requests, and particularly where damage to the natural heritage ensues, may be regarded as irresponsible behaviour. Consequently, the right of access would be forfeited.

Section 12 Byelaws in relation to land over which access rights are exercisable

(1) (c) The local authority may, in relation to land in respect of which access rights are exercisable, make byelaws providing for:

- (ii) the prevention of damage.
- (iv) the conservation or enhancement of natural or cultural heritage.

(2) Byelaws made under the above provisions may, in particular –

- (a) prohibit, restrict or regulate the exercise of access rights.

(3) Byelaws made under this section shall not interfere with the exercise of –

- (a) any public right of way or navigation, or
- (b) the functions of a statutory undertaker.

(6) The local authority shall, at the same time as they first make the proposed byelaws open to public inspection, consult the persons and bodies mentioned in subsection (7) below on the proposed byelaws.

(7) Those persons and bodies are:

- (a) every community council whose area includes an area to which the proposed byelaws would apply;
- (b) the owners of land to which the proposed byelaws would apply;
- (c) representatives of those who live, work, carry on business or engage in recreational activities on any land affected by the proposed byelaws;
- (d) the local access forum;
- (e) statutory undertakers who undertake on land to which the proposed byelaws would apply;
- (f) Scottish Natural Heritage;
- (g) such other persons as the local authority thinks fit.

The draft Guidance for local authorities on the performance of their functions under the access legislation provides more detail on how the use of byelaws would work in practice. The draft Guidance states that byelaw making powers can be exercised generally in relation to land (and inland water), or in respect of a specific part of the land over which access rights are exercisable, and may affect different provisions for different parts of the land (or inland water). They should be limited to those specific areas where the need arises, rather than be applied over extensive areas on a precautionary basis. Byelaws may be used to modify or limit the exercise of access rights, whether in limiting certain activities, or by affecting how and where access rights might be exercised, or excluding access rights over an area.

Circumstances in which the use of byelaws could be appropriate might be:

- Where persistent breach of responsible behaviour or responsible management action arises and staff operating on the ground need the support of the byelaw provision;
- Where persistent usage of, for example, a stretch of river or riverbank has resulted in damage to wildlife and their habitats, on land of local importance, other than that already protected by a natural heritage designation and where byelaws already exist;

Demonstration of need would therefore appear to be a pre-requisite for use of a byelaw to protect an area of land or inland water. This can be done by providing the local authority with as much information as possible relating to specific incidents, i.e. dates, nature of incidents, impact on the area in question (quantitative if possible).

The draft Guidance advises further that in circumstances where local authorities may be in doubt over the use of the byelaw making powers available for the conservation of natural or cultural heritage, advice should be sought (by the local authority) from any appropriate body, such as Historic Scotland or Scottish Natural heritage.

Other public bodies, including Scottish Natural Heritage, British Waterways, Ministry of Defence and the Forestry Commission, can all introduce byelaws on land or water that they own or control.

Section 11 Power to exempt particular land from access rights

(1) The local authority may (whether on application made to them or not) by order under this section made in respect of a particular area of land specified in the order exempt it for a particular purpose specified in the order from the access rights which would otherwise be exercisable in respect of it during such times as may be specified in the order.

The draft Guidance to local authorities offers examples of short term and longer term exclusions under section 11, none of which relate to protection of the natural heritage. However, the draft Guidance does state that where exclusions of the land from access rights is considered the appropriate action, an order under section 11 provides a suitable mechanism. In considering the appropriateness of a section 11 order for the purpose of protecting the natural heritage, the following should be taken into account:

- Section 11 orders would have effect for a limited period.
- Section 11 orders can have effect for a period of 6 days or more.
- Local authorities will be required to review any such orders not later than 2 years from their date of coming into force, and thereafter at intervals of not more than 2 years, at which date they will expire unless re-enacted.
- The local authority would have the power to revoke, amend or re-enact any such order.
- Consultation must be carried out before Ministers will confirm an order.

The above is an outline of provisions within the Land Reform (Scotland) Act 2003 that may be applied for the protection of the natural heritage. In the absence of precedent or case law there will be uncertainty surrounding the outcome of application of these options. In practical terms, all of the options will be difficult to enforce and monitor and will rely greatly on a compliant public.

SECTION 03: FACT SHEETS

FACT SHEET 15: PROTECTION OF NATURE CONSERVATION INTERESTS (CONTINUED)

The Wildlife & Countryside Act 1981

Under the terms of section 29 of the Wildlife & Countryside Act 1981, the Ministers, on the advice of Scottish Natural Heritage, can issue a Nature Conservation Order in order to protect areas of land of special scientific interest which are either likely to be or are being damaged. This type of order, which may be used to restrict access to a specific area, is primarily a means of safeguarding a site whilst appropriate management for the future is secured.

Under Section 29 (11) of the Wildlife and Countryside Act 1981 SNH is obliged to publish in its Annual Report a list of orders which have come into operation during the year.

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FACT SHEET 16: THE MUIRBURN CODE

Informed by Scotland's Moorland Forum, the Scottish Executive has published guidance on how to carry out burning of heather moorland safely and effectively. This guidance is presented in the "The Muirburn Code", and in the more comprehensive "Prescribed Burning on Moorland: Supplement to the Muirburn Code: A Guide to Best Practice".

Particular reference to public safety is contained in the Supplement, and this is reproduced below:

Light and control fires safely

On moorland where there is public access, it may be worth erecting signs at access points to warn the public that it is dangerous to approach fires. Although for most people a smoke plume will be a much more conspicuous and informative indicator of potential danger than a sign, it may still be worthwhile to provide a conspicuous temporary notice. This is also an opportunity to explain to visitors why burning is being undertaken. This will reduce unnecessary call-outs for the fire brigade and adverse publicity.

The full text of both documents can be viewed at:

- The Muirburn Code:
www.scotland.gov.uk/library3/environment/mbcd.pdf
- Prescribed Burning on Moorland: Supplement to the Muirburn Code: A Guide to Best Practice:
www.scotland.gov.uk/library3/environment/msup.pdf

Alternatively, paper copies are available on request from:

The Stationery Office Bookshop
Scottish Executive Desk
71 Lothian Road
Edinburgh
EH3 9AZ
Tel 0870 606 5566
Fax 0870 606 5588

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